

SEXUAL ASSAULT IN CANADA: WHAT DO WE KNOW?

In general terms, sexual assault can be defined as “Forced sexual activity, an attempt at forced sexual activity, or unwanted sexual grabbing, kissing, or fondling (Perrault & Brennan, 2010) or as “A term used to refer to all incidents of unwanted sexual activity, including sexual attacks and sexual touching” (Brennan & Taylor-Butts, 2008). The Criminal Code of Canada refers to three levels of sexual assault (see box below) without a general summary definition. Although the law points out that both males and females can be victims and perpetrators of sexual assault, the evidence indicates that females make up the majority of victims and males the majority of perpetrators (Perreault & Brennan, 2010).

Among all violent crimes reported to police in 2010, sexual assault is one of the few that showed an increase (+5%) in reported rates from 2009 (Brennan & Dauvergne, 2011). As we will see below, the rates of sexual assault vary widely across provinces, regions and cities in Canada and victims of sexual assault represent a cross-section of ages and cultural, ethnic and socioeconomic backgrounds. That being said, it is known that poverty, racism and inequity can increase vulnerability to sexual assault. For example, Aboriginal people in Canada have considerably higher sexual assault rates compared to non-Aboriginal people (Perreault, 2011). It is important for people to know what the law says about sexual assault and to understand when that line is being crossed. In this issue of Check the Research, we describe what constitutes a sexual assault, discuss recent rates and trends, and consider where things stand at present. To understand where we are now, let’s first take a brief look at the history of Canadian legislation and attitudes towards forced sexual activity.

RAPE AND SEXUAL ASSAULT IN CANADA IN HISTORICAL PERSPECTIVE

Prior to 1983, the Criminal Code of Canada did not refer to sexual assault, but rather to rape and to the lesser charge of indecent assault. Rape referred specifically to assaults that involved vaginal and/or anal penetration, and was characterized as a sexually motivated crime rather than as a physical assault. Marital rape was not a recognized crime and men accused of rape often used the argument that they “honestly believed” a woman had consented to their sexual advances. Lawyers could question rape victims about their past sexual experiences as a tactic to discredit their allegations of being forced into unwanted sexual activities, i.e. that they had actually been assaulted. The belief that women who were sexually experienced were more likely to have consented to sexual advances was also widespread in society. Commonly held rape myths (e.g., women said no when they really meant yes; women who dress or behave in certain ways were responsible for their sexual victimization; most rapists are strangers, etc.) further fed into a judicial process that discouraged women from reporting sexual assaults because they feared that they would not be believed or that their personal histories would be brought up in public to prove that they had somehow encouraged their attacker and actually caused their rape.

SEXUAL ASSAULT LAWS IN THE CURRENT CRIMINAL CODE OF CANADA

Over the years, women activists and others advocated for a different interpretation of rape that focused less on its sexual aspects more on the violent, physical nature of what was, in fact, an assault. In 1983, the Criminal Code was changed to reflect this view; the crime of sexual assault was created. Sexual assault was a much broader category than rape and included a range of unwanted coercive behaviours from touching and kissing to oral sex and vaginal and anal intercourse. Three levels of sexual assault were introduced, with Levels 1 to 3 representing an escalation of physical violence (see box below). The criminalization of sexual assault in marriage was also recognized, and the concept of consent was clearly outlined. It became the obligation of the accused to prove that consent for sexual activity had been actively sought and obtained. The argument of “honest belief” was no longer accepted. As well, it was specified that consent could not be given if a person was intoxicated, or of diminished capacity that made them unable to give informed consent, or when the aggressor was in a position of trust or authority. Limitations were placed on lawyers’ rights to bring up past sexual and personal histories of victims in the course of a trial.



LEVELS OF SEXUAL ASSAULT AS IN THE CRIMINAL CODE OF CANADA

Sexual assault is viewed as incidents of unwanted sexual activity, including sexual attacks and sexual touching.

Level 1: Any form of sexual activity (e.g., kissing, fondling, oral sex, vaginal or anal intercourse) forced on someone else resulting in minor physical injuries or no injuries to the victim.

Level 2: Sexual assault with a weapon, threats, or causing bodily harm.

Level 3: Sexual assault that results in wounding, maiming, disfiguring or endangering the life of the victim.

Source: Brennan, S. and Taylor-Butts, A. (2008). Sexual assault in Canada 2004 and 2007. Canadian Centre for Justice Statistics Profile Series. No. 19. Statistics Canada Catalogue no. 85F0033M. Ottawa.

CURRENT REPORTING OF SEXUAL ASSAULT IN CANADA

When the crime of sexual assault replaced rape in the Criminal Code, it was hoped that victims would feel safer in reporting incidents and pressing charges against perpetrators. However this was not to be the case and rates of reporting have not risen significantly since the inclusion of sexual assault in the Criminal Code. Recent statistics show that 9 out of 10 sexual assaults are not reported to the police (Perreault & Brennan, 2010). Victims of sexual assault give various reasons for not reporting their experiences. For example, rape/sexual assault myths are still common in our society and they tend to shift blame to the victim and raise doubts about the credibility of their testimonies. Many victims feel that their experiences are not serious enough to report, and prefer to deal with their personal issues outside of the legal system.

The fact that most perpetrators are known to victims, and are often family members or friends, may also explain why some women are concerned about reporting a sexual assault (Lakeman, 2011; Perreault & Brennan, 2010). Victimization statistics for 2010 that rely on self-reported responses from a broad survey of Canadians, show that over half (51%) of sexual assaults were committed by assailants known to the victim. This compares to 29% in the case of robberies and 31% in the case of physical assaults (Perreault & Brennan).

VARIATION IN THE RATES OF SEXUAL ASSAULT IN CANADA IN 2009

Since the Criminal Code cites three levels of sexual assault, it is more informative to report rates for each level rather than blending them to give an overall rate. Table 1 below reports those rates for Canada and for each of the provinces, territories and regions. Each rate reflects the reported number of assaults per 100,000 of population. The rates for Canada in 2009 show that level 3, the highest assault category, has the lowest rate at 0.36/100, compared to 1.03/100,000 for level 2, and 60.64/100,000 for level 1 (Statistics Canada, 2011). Not surprisingly, this pattern is the same for each of the provinces, territories and regions although the actual rates vary considerably. For example, level 1 rates range from 41.85/100,000 to 627.66/100,000 with a national average of 60.64/100,000 (Statistics Canada). Provinces and regions also vary in relation to the less common level 2 and level 3 offences. Similar variations are also seen in metropolitan areas across Canada. These differences arise from a variety of social and economic factors and inequities that also impact on other areas of health.

It is important to be aware that the rates of sexual assault per 100,000 do not reveal the raw numbers of sexual assaults that provide the basis for calculating the rates. For example, the national rate of sexual assaults in Canada was 60.64 per 100,000 of the population in 2009 was derived from the actual number of cases reported to police which was almost 21,000 (Dauvergne & Turner, 2010).



It is also important to note that while Level 1 sexual assaults are classified as the least physically traumatic, this should not obscure the fact that such assaults can do severe emotional and psychological harm to the victim that is not reflected in the classification.

Table 1: Reported sexual assault rates in Canada, 2009

Rates are number of reports to police per 100,000 population

	Violations		
	Sexual assault, level 3, aggravated	Sexual assault, level 2, weapon or bodily harm	Sexual assault, level 1
Canada	0.36	1.03	60.64
Newfoundland and Labrador	*	1.38	67.00
Prince Edward Island	*	1.42	41.85
Nova Scotia	0.85	1.17	72.69
New Brunswick	0.40	0.53	73.65
Quebec	0.33	0.75	53.85
Ontario	0.24	1.03	53.22
Manitoba	0.16	1.80	102.70
Saskatchewan	1.07	1.84	111.35
Alberta	0.49	0.73	59.77
British Columbia	0.40	1.21	58.27
Yukon	2.97	5.94	196.12
Northwest Territories	*	2.30	425.88
Nunavut	9.32	18.64	627.66

* Rates not available
Source: Statistics Canada. Table 252-0051 - Incident-based crime statistics, by detailed violations, annual.

Females represent the largest number of sexual assault victims, with over 5 times the rate of reported assaults than males (Brennan & Taylor-Butts, 2008). This holds true for both police reported statistics and for self-reported victimization statistics, and across all levels of sexual assault. Victims of sexual assault also tend to be younger in age. The 2004 General Social Survey reported that sexual assault rates for people aged 15 to 24 were almost 18 times greater than rates for those aged 55 or older. Statistics also show that those who are accused of sexual assault are predominately male. Police reported assaults from 2007 listed a male assailant in 97% of cases (Brennan & Taylor-Butts).

WHAT'S THE TAKE HOME MESSAGE

It's important for young people to be aware of the laws regarding sexual assault in Canada. People aged 15 to 24 are more likely than people in other age groups to be the victims of sexual assault and most sexual assaults are never reported to the police. Knowing about the laws helps us to more clearly understand that it is against the law when someone forces you into any kind of sexual activity against your will. The law is also important to know so that you can make sure that your own behaviour does not constitute sexual assault.

There are a number of myths (often called "rape myths") that can contribute to the occurrence of sexual assault. One of the most important is that the perpetrators of sexual assault are typically strangers to the victim when in fact, in



most cases, the perpetrator is someone that the victim knows (e.g., acquaintance, co-worker, friend, family member). The vast majority of sexual assaults are committed by men. Some of the common myths contributing to men sexually assaulting women include that women sometimes say “no” to sex when they really mean “yes” and that it is OK for a man to keep pressuring a women, sometimes with physical force, to have sex even though she has said no. All men need to understand that when it comes to sex, no means no. Another common myth is that women who dress in a revealing or “sexy” way are causing or contributing to sexual assault. Men need to fully understand that there is no excuse to force another person into sexual activity against their will.

As shown above, rates of sexual assault vary across the provinces and territories. Thus, we need to be aware that sexual assault is linked to other important social issues such as socio-economic inequity and injustices.

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