

Canadian Content, Context, Current Practices, and Controversies in Sexual Violence Risk Assessment

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Abstract

Sexual violence risk assessment features prominently in Canada's correctional, criminal justice, and forensic mental health systems in an effort to accurately appraise risk to inform service delivery and allocation of resources to prevent future sexual violence. Through collaborations between Canadian researchers and frontline staff, a suite of sexual violence risk instruments has been developed which serve a central function in the administration and management of persons who commit sexual offenses. Although current practices vary within Canada in terms of instrument use and emphasis, a common thread is almost ubiquitous application of Static-99R, with frequent usage of one of many Canadian dynamic tools in correctional, mental health, and legal settings. Applications of sexual violence risk measures, especially actuarial tools, to Indigenous criminal justice involved persons has been of controversy, although research efforts have intensified to examine the psychometric properties of these measures to maximize benefits and minimize potential harms associated with their use with this population. We conclude with reflections on some strengths and shortcomings in the practice of sexual violence risk assessment in Canada.

Key words: sexual violence risk assessment, recidivism, actuarial, Canada

Sexual violence risk assessment and management has important criminal justice, health, correctional, and public policy implications in Canada, and is a routine activity in Canada's criminal justice and forensic mental health systems. This article for this guest issue provides an overview of the Canadian landscape in sexual violence risk assessment, and is organized quite intentionally by an alliteration string: the Canadian content, context, current practices, and controversies. Firstly, however, we will provide a brief overview of Canadian attitudes and how the criminal justice system is organized.

Although Canada shares a continent with the United States, policies and attitudes have differed dramatically in the two countries. For example, the US tends to be an outlier among developed nations in terms of its high incarceration rates (Public Safety Canada, 2014), whereas Canada has tended to pursue more rehabilitation- and reintegration-focused policies (for example, unlike the United States, Canada does not have public sex offender registries). Like in many countries, sex offenders tend to be viewed more negatively than non-sex offenders in Canada (Weekes, Pelletier, & Beaudette, 1995). However, Canadian public attitudes have tended to simultaneously support both punishment/incapacitation philosophies as well as rehabilitative/treatment philosophies (Corabian, 2016; Olver & Barlow, 2010). For example, one study examining Canadian attitudes found considerable support for rehabilitation, and that overall Canadians viewed rehabilitation as a more constructive alternative to longer prison sentences (Corabian, 2016).

One study interviewing family members of sex offenders has found mixed assessments from them in terms of how the media reports on the offences. Some felt that media reports were excessive,

misleading, and sensationalized, whereas others believed the media coverage was fair (Vaz, 2015). Examples of misleading reporting included not mentioning things such as that the offender turned himself in for the offences or was seeking counseling. We are not aware of any other studies that examine how Canadian media reports on these types of cases (especially compared to the United States). In our professional experience, media coverage in Canada is mixed, with some sensationalization, but also some balanced and nuanced reporting that attempts to tackle issues of prevention and rehabilitation.

Overview of Jurisdictions in Canada

Briefly, although Canada has a single federal Criminal Code, its correctional system is divided into federal and provincial systems. The Correctional Service of Canada (CSC) is the federal system which administers adult male and female offenders serving sentences of a minimum two years duration, and has institutions (prisons and regional treatment centres) across Canada's five geographic regions: Pacific (British Columbia and Yukon territory), Prairie (Alberta, Saskatchewan, Manitoba, Northwest Territories, northern Ontario), Ontario (which includes Nunavut territory), Quebec, and Atlantic (New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland). Typically, federal offenders receive a time limited (i.e., determinate) sentence and are automatically released after two-thirds of their sentence (Statutory Release) and supervised in the community until the end of their sentence (Warrant Expiry), unless: a) they are detained to Warrant Expiry due to a high risk of committing a violent offence before sentence completion, b) are serving a life or indeterminate sentence (explained below), or c) are paroled prior to serving two-third of their sentence.

Provincial corrections administer offenders serving sentences under two years duration, as well as non-custodial sentences. Each of the 10 provinces and 3 territories has their own independent provincial criminal justice and correctional system with the management, housing, supervision, and care responsibility for the men and women in their jurisdiction. For context, roughly 10% of sex offenders will be under federal jurisdiction and 90% will be under provincial jurisdiction (CCJS, 2008).

Moreover, individuals may receive forensic treatment services (including sexual offense specific) through inpatient or outpatient mental health facilities, which are administered by a health ministry rather than corrections. Private practice services and agencies, sometimes on contract with the courts, CSC, or health, also exist in abundance. In such instances, the individual could be an outpatient on probation or parole or past their sentence expiry, or s/he could be a provincial inmate transferred to a forensic mental health facility for treatment, or s/he may be adjudicated not criminally responsible and fall under jurisdiction of a provincial review board.

Canadian Content: Sexual Violence Risk Tools Developed in Canada

Canada has much to be proud of when it comes to the development of structured instruments with the expressed intention of assessing sexual violence risk to inform risk management efforts through treatment, supervision, monitoring, and other intervention strategies. Bourgon, Mugford, Hanson, and Coligado (2018) provide an excellent historical overview of risk assessment in Canadian corrections, including sexual violence risk assessment. As they outline, sexual violence risk assessment commenced in the mid-1990's with a search for risk factors unique to sexual offenders. The provinces of Saskatchewan and Manitoba employed a Secondary Risk Assessment-Sexual Offenders (SRA-SO), while British Columbia, in 1995, developed the Sex Offender Risk

Assessment (SORA) for use by probation officers to monitor risk and need of sexual offenders under community supervision. Both tools were structured professional judgment (SPJ) instruments (Bourgon et al., 2018).

The seminal meta-analytic work by Hanson and Bussière (1996/1998) out of Ottawa, Ontario identified a large number of sexual recidivism predictors, and this literature informed the item selection and development of the Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR; Hanson, 1997), a 4-item static actuarial scale. The RRASOR was merged with the Structured Anchored Clinical Judgment (SACJ-min) from the United Kingdom, resulting in Static-99 (Hanson & Thornton, 1999/2000). As Bourgon et al. (2018) note, Static-99 was implemented in CSC service wide, as well as many provincial jurisdictions. In an attempt to improve upon Static-99, a similar scale called Static-2002 was later developed (Hanson & Thornton, 2003) and both scales were later revised to create Static-99R and Static-2002R (Helmus, Thornton, Hanson, & Babchishin, 2012). Leading up to these developments, Hanson and Harris (1998/2000) had also conducted a retrospective archival study to identify dynamic (i.e., changeable) risk factors, leading to development of the Sex Offender Need Assessment Rating (SONAR; Hanson & Harris, 2000), and then the STABLE- and ACUTE-2000 measures (Hanson & Harris, 2001), the predecessors of the current 2007 versions. In a longitudinal project, parole and probation officers across Canada's provinces and territories, as well as the American states of Alaska and Iowa, implemented the STABLE and ACUTE for sexual offenders on community supervision. The results were used to revise the item content of the 2000 variants into the current 2007 versions (Hanson, Harris, Scott, & Helmus, 2007).

Canadian developments in sexual violence risk assessment were occurring outside Ottawa as well. The mid-late 1990s included the development of the Sex Offender Risk Appraisal Guide (SORAG; Quinsey, Rice, Harris, & Cormier, 1998), created as an alternative to the Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993) to assess risk for general violence among sex offenders. These scales were developed in a forensic mental health hospital in rural Ontario. Later revisions combined these scales into the Violence Risk Appraisal Guide - Revised (Rice, Harris, & Lang, 2013). Further, in 1997, on the country's West Coast the Sexual Violence Risk-20 (SVR-20; Boer, Hart, Kropp, & Webster, 1997), a 20-item SPJ sexual violence risk tool was released, through a collaboration among British Columbia psychologists and researchers from Simon Fraser University. The SVR-20 was arguably the first formalized sexual violence risk instrument that included dynamic factors. In 2003, the Risk for Sexual Violence Protocol (RSVP; Hart et al., 2003) was developed as a 22-item SPJ-based tool which was similar in form and content, but independent of, the SVR-20.

Concurrently, on the Canadian Prairies in Saskatoon, Saskatchewan in 1999, the first iteration of the Violence Risk Scale-Sexual Offender version (VRS-SO; Wong, Olver, Nicholaichuk, & Gordon, 2003, 2017) was developed out of the still nascent dynamic risk factors literature. The tool was a collaboration between the Regional Psychiatric Centre (RPC) of CSC and the University of Saskatchewan, and the existing literature was used to revise the item content of the Violence Risk Scale (VRS; Wong & Gordon, 1998-2003), a general violence risk assessment tool intended primarily for violent nonsexual offenders. In the meantime, in 2000 CSC's National Sex Offender Program (NaSOP), consisting of low, moderate, and high intensity streams was implemented. The VRS-SO and STABLE-2000 were both mandatorily administered by program facilitators at pretreatment and posttreatment throughout CSC's five regions, while Static-99 was used to determine treatment intensity at intake (see Olver, Nicholaichuk, Kingston, & Wong, 2014). In 2006, it was made no longer compulsory to administer both the VRS-SO and STABLE-2000, and the NaSOP structure changed considerably after that, in addition to both tools undergoing revision. Currently, CSC evaluators have the autonomy of selecting the risk assessment tools used to

complete their sexual violence risk assessments.

In all, collaborations across the provinces of British Columbia, Saskatchewan, and Ontario between university and government researchers and frontline staff generated a Canadian swell of static and dynamic sexual offender risk assessment tools in the late 1990s and early 2000s that include the Static-99 (and 99R), Static-2002 (and 2002R), SORAG, VRAG-R, SONAR, STABLE-2000/2007, ACUTE-2000/2007, VRS-SO, SVR-20, and RSVP.

The Canadian Context of Sexual Violence Risk Assessment and Management

In his review of developments in violence risk assessment research and practice, Mills (2017) notes that an assessment instrument is not the same as an assessment; the former is one component of the latter. Thus, as Boer et al. (1997) advise, the process of conducting a sexual violence risk assessment is an integrated multi-step process that involves the use of multiple assessment methods (e.g., interview, file review, psychological testing, scoring risk tools), assessing multiple domains of functioning (e.g., sexual functioning, attitudes, criminal history, substance use, emotional control), from multiple information sources (e.g., the offender him/herself, collateral sources such as corrections staff, and pertinent documents such as past reports, criminal records, etc.). Not uncommonly multiple risk tools may be employed, preferably to allow for the assessment of static and dynamic risk factors. The risk formulation should speak to probability, imminence, and severity of a potential sexual offense, with risk management recommendations in place to mitigate the potential for a new sexual offense.

In Canada, risk assessments are conducted for a variety of purposes in a number of criminal justice and mental health contexts, either by public service employees or private practitioners. Some of the most frequent contexts in which sexual violence risk assessments may be conducted include purposes of sentencing, intake and treatment planning, conditional release, and preventative detention (the latter will be discussed in tandem with sentencing and conditional release). In terms of sentencing, an evaluator may be appointed by the court or retained by counsel to conduct a risk assessment, to be used as one source of information to inform judicial sentencing decisions (e.g., custody vs. community, length of sentence, special conditions, etc.). In addition, risk assessment may be used to inform preventative detention at the point of sentencing. For instance, a risk assessment may be conducted as part of a Dangerous Offender (DO) application, which if successful, can result in an indeterminate sentence (i.e., there is no defined expiration), with release being contingent on reducing risk sufficiently to be paroled; these typically result in very long sentences (Nicholaichuk, Olver, Gu, & Takahashi, 2013). An alternative is the long-term offender (LTO) designation, in which case, the individual could be given a period of community supervision (long term supervision order) up to 10 years past their Warrant Expiry.

After sentencing, risk assessments conducted typically by parole/probation officers and psychologists/psychiatrists, can be used to inform program intensity (e.g., moderate vs. high intensity) as well as program foci and treatment planning (e.g., sexual offense specific services), whether the individual is in the institution or community. A dynamic risk tool can be used to identify treatment or supervision targets (e.g., sexual self-regulation, hostility toward women), or core or ancillary programs within a custody setting (e.g., substance abuse) or on release that the individual could complete to manage their risk. Risk assessments can also inform treatment readiness (e.g., level of insight and motivation to change) to help tailor services, as well as progress toward risk reduction and need for follow-up services.

Risk assessments, typically completed by psychologists and psychiatrists, can be used to inform release decisions (e.g., by the Parole Board of Canada for federal offenders) as well as release planning. These assessments may inform eligibility for parole, the potential need for detention (i.e., remaining incarcerated until Warrant Expiry), special risk management conditions and strategies upon other forms of conditional release to the community (e.g., no unsupervised contact with children, abstain from substances, residency conditions, follow-up treatment services etc.), or legal provisions such as a period of recognizance (termed a Section 810) following their Warrant Expiry. When the individual is no longer under federal jurisdiction, or if on an 810, the province resumes responsibility and it is up to local probation offices and/or outpatient programs or other offender advocacy services to provide support and risk management. In these contexts, sexual violence risk assessments can be very useful as well.

A good risk assessment should ideally inform risk management (e.g., treatment and prevention strategies). Risk management strategies are varied across Canada. The most extensive sex offender treatment is delivered in a group format in federal prisons with the National Sex Offender Program, although the name of the program as well as its structure/content/policies changes over the years. Across its iterations, however, it generally adheres at least moderately to the Risk/Need/Responsivity (RNR) model of effective correctional practices (Bonta & Andrews, 2017). Outside of federal corrections, treatment and prevention approaches are as varied as the geography of the country. McGrath and colleagues (2010) provide one helpful and detailed survey of the content/structure/approaches in 34 Canadian sex offender treatment programs. More broadly speaking, Canada is the birthplace of two notable approaches to treatment/prevention. The RNR model of effective correctional practice applies to all types of offenders (including sex offenders) and the research behind this model was conducted in Ontario. Additionally, Circles of Support and Accountability (COSA) is an approach to managing the risk of high risk sex offenders, and was developed in Ontario as well (Wilson, Cortoni, & Vermani, 2007). The COSA model has spread internationally, but continues to be used in some Canadian cities, although its funding status tends to change across time.

Current Canadian Practices: Sexual Violence Risk Assessment Tools used in Canada

So, with the instruments and contexts covered for sexual violence risk assessment in Canada, what is actually done in practice? Two surveys examined the practice of sexual violence risk assessment in Canadian jurisdictions, which we discuss in turn, in addition to updates we provide based on our research and understanding of practice across Canadian settings.

Current practice in correctional and other settings. As part of an undertaking by Public Safety Canada, Bourgon et al. (2018) examined use of sexual violence risk measures in community corrections (probation and parole), as well as provincial and federal institutional settings in Canadian provinces, amounting to 14 jurisdictions in total (i.e., 10 provinces, 3 territories, and CSC). They obtained information, via email or interview, from a total of 20 personnel across the 14 jurisdictions about what tools were used in their setting. Their focus was on system-wide use of tools (e.g., policy-mandated tools), and excluded voluntary use of additional tools at the discretion of individual staff members. Their survey reported that CSC used only two tools system-wide, Static-99R and STABLE-2007, and that Static-99R was employed within institutional and/or community settings in most other provinces/territories (Static-2002R was used in Nunavut), and use of the SORAG in Canadian corrections was limited to Nova Scotia (community setting only). In terms of dynamic tools, the survey listed one other tool, the SVR-20, the use of which was limited to Nova Scotia (community) and Nunavut (institution), while STABLE- and ACUTE-2007 were listed as

the only dynamic tools employed across all provinces and territories (primarily in community settings); the holdouts were Alberta and New Brunswick, which were not listed as using sexual offense specific tools.

Although the Bourgon et al. (2018) review is an important contribution, its focus on system-wide implementation of tools fails to consider the full gamut of community and institutional correctional practice, and thus to have complete correctional coverage. Indeed, CSC alone, counted as a single jurisdiction in their review, spans five regions consisting of 43 institutions, 91 parole offices, and 15 community correctional centers (CSC, 2016), which can introduce considerable variability in practice. For instance, in Saskatchewan's and Manitoba's CSC institutions (where the first author has frequently consulted and/or been previously employed) the VRS-SO has been the primary dynamic tool employed since the early 2000's, while the STABLE/ACUTE-2007 have been routinely employed in the community. Contextual/systemic factors may further impact the frequency of dynamic tool use. For instance, seldom is sexual offense specific treatment (for which dynamic tools are particularly informative) provided in a provincial institution, but the availability of such services is mandated within the CSC; it may be for this reason that few provinces reported the use of dynamic tools within institutional settings.

As we noted earlier, sexual violence risk assessments are often conducted to inform services by a health authority or in private practice settings, while the Bourgon et al. (2018) review was limited to corrections. As just one example, forensic inpatient and outpatient programs operated through the Alberta and Saskatchewan Health Authorities and Ontario's Ministry of Health use the VRS-SO to guide intake, treatment planning, and evaluation for their sexual offense specific services. Although we do not have direct firsthand knowledge of all inpatient and outpatient forensic mental health programs across the country, given the current zeitgeist to use evidence informed tools and to structure decision making, we anticipate that static and dynamic sexual violence risk tools are likely employed by programs within other health ministries and settings.

Current practice in legal proceedings. Blais and Forth (2014) reviewed risk assessment practices of forensic evaluators for Canadian DO and LTO cases, which included those who were court appointed as well as those retained by the Crown or the defense. In all, 120 cases were identified through the National Flagging System that were processed between 2006 and 2008 in the provinces of BC, Alberta, and Ontario. Nearly two thirds (64%) involved an index offense that was sexual in nature, while the remaining 36% involved index nonsexual violent offense(s), and some of these offenders would likely have had a sexual offence in their criminal history record. Although the authors did not differentiate the frequency of tool use by index offense (i.e., a sexual violence risk tool would most likely be employed for an individual with a sexual offense, but unlikely for an individual without a history of sexual offenses), Static-99 was used in 65% of cases overall (equating to most, if not all cases involving an index sexual offense), while the SORAG was used in 42% of cases, the SVR-20 in 13% of cases, and the RSVP in 11% of all cases. While an important snapshot of DO and LTO proceedings, the study was limited in its scope and coverage (i.e., 2-year usage across three provinces from over 10 years ago), although it fills some gaps from the Bourgon et al. (2018) survey and identifies a broader range of instruments used across legal and correctional settings.

For the present article, we conducted a simple search of the Canadian Legal Information Institute (CanLII; <https://www.canlii.org/en>), an electronic database of court decisions organized by provincial, territorial, and federal jurisdictions, using the acronyms or expansions of the Canadian sexual offense risk assessment tools. The results enable us to obtain a rough estimate of the relative frequency (if at all) with which these instruments were employed in Canadian court-ordered risk assessments, as represented by the court cases posted on CanLII. Although CanLII is not

exhaustive, it is substantial in its scope of coverage and includes many of the DO and LTO court decisions.

Our search revealed that Static-99/R was most frequently employed, with it referenced in 410 decisions, followed (in order) by the SORAG (n = 216), SVR-20 (n = 119), STABLE-2007 (n = 96), RSVP (n = 53), STATIC-2002/R (n = 41), VRS-SO (n = 24), and ACUTE-2007 (n = 3). Moreover, while Static-99/R was employed with high frequency across all provinces and territories, our search revealed that court decisions employing the SORAG were most frequent in Ontario (56.5%), for the SVR-20 it was BC and Quebec (50.4%), RSVP in BC and Yukon (66%), STABLE-2007 in Quebec (57.3%), and the VRS-SO in Saskatchewan and Manitoba (66.7%). In conclusion, our brief review of CanLII documents demonstrated that a greater variety of tools are employed by evaluators for the court in sexual violence risk assessments than indicated in Blais and Forth (2014), although the relative frequency with which a given tool is employed parallels their review. It also highlights jurisdictional variability that mirrors at least somewhat where the risk scales were developed (i.e., the SPJ scales are commonly used on the West Coast, the SORAG in Ontario, and the VRS-SO in Prairie provinces).

Controversies and Conclusions about Sexual Violence Risk Assessment in Canada

This section reviews some issues of controversy in Canadian sexual violence risk assessment. Canada's Indigenous peoples, which are represented by First Nations, Métis, and Inuit, constitute just 3% of the general population, but over 20% of the federal correctional population (Public Safety Canada, 2014). The overrepresentation extends to provincial and territorial jurisdictions, with the highest concentration of Indigenous persons occurring within Prairie provincial and federal correctional settings. Against this backdrop is Canada's colonial history and oppression of Indigenous persons, which has resulted in loss of culture and language and intergenerational social plight that continues to be felt to this day (Truth and Reconciliation Commission, 2015).

While the CSC had invested substantial resources into the development of Indigenous correctional services and supports, controversy has shrouded the use of actuarial risk assessment instruments with this population, which has resulted in legal challenges, culminating in a recent Supreme Court of Canada decision (Ewert v. Canada, 2018) that CSC has violated its legal obligations by failing to take more steps to ensure empirical support for actuarial risk tools used with Indigenous offenders. The controversy stems from arguments that actuarial tools are culturally biased, inexorably fixed and deterministic in their application, and that they overestimate rates of recidivism for Indigenous persons, who tend to score higher on such measures and evince higher rates of recidivism (see Gutierrez, Helmus, & Hanson, 2016; Hart, 2016; and Olver, 2016 for a more detailed discussion and critical review of these arguments). With respect to sexual violence risk tools, specifically, research with Indigenous federally sentenced men has demonstrated that Static-99/R (Babchishin, Blais, & Helmus, 2012; Olver et al. 2018) and the VRS-SO (Olver et al. 2018) have significant and moderate in magnitude predictive accuracy for sexual violence, and that reductions in risk measured by the VRS-SO are associated with decreased sexual recidivism. The limited research to date has also demonstrated that base rate variation in sexual recidivism between Indigenous and non-Indigenous men can be accounted for primarily by individual differences on static and dynamic risk factors, although substantial unexplained variation remains for general violence (Olver et al., 2018). The matter is not settled, and we anticipate further applied research will inform sources of base rate variability and what processes or augmentations may be made to strengthen the practice of sexual violence risk assessment with Indigenous persons.

In conclusion, as outlined in our context of Canadian assessment, risk assessors are not rigidly bound by a single tool or scores on that tool, but rather, use the information as part of an overall risk assessment that involves integration of diverse information from multiple sources. And in this respect, this highlights something that Canada does well - the routine use of structured homegrown assessment tools to guide risk management efforts through treatment, supervision, monitoring and other supports. Indeed, Canadian corrections is credited as the birthplace of the risk-need-responsivity (RNR; Andrews, Bonta, & Hoge, 1990) model of correctional intervention, but serves as the dominant model linking assessment and intervention provincially, federally, and territorially to manage, reduce, and prevent sexual victimization.

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