

# Public Perceptions of the Legal Handling of Sexual Violence in Youth Sport in Canada: An Unobtrusive Analysis of the Graham James Case

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## Abstract

In 2012, one of the most widely publicized Canadian cases of sexual violence in Canadian youth sport resurfaced on the national newsstands. Graham James, a former Hockey News Man of the Year, was arrested on allegations that he engaged in long-term non-consensual sexual relations with youth Canadian hockey players he was coaching. This arrest came on the heels of a previous jail sentence in 1997 for sexually assaulting three hockey players he had coached, which he later received a pardon for. In March of 2012, James was sentenced to two years in prison, which was subsequently increased to five years on appeal in 2013. This paper examines public perceptions of the legal handling of this case through the unobtrusive analysis of 1024 comments posted electronically following an online media article pertaining to the initial two-year sentence in 2012. Through the unobtrusive data analysis, several themes emerged including: a) arguments for a harsher punishment, b) perceived failings of the Canadian Criminal Justice System, c) criticism of Canadian political parties and current government, d) indifference to the sentence, e) appreciation of the courage of the victims in coming forward with their complaints, and f) perceived failings of sports organizations in preventing sexual abuse.

**Keywords:** sexual violence, hockey, Canadian Criminal Justice System

## 1. Introduction

On March 20, 2012 former Canadian junior hockey coach Graham James was sentenced to two years in prison for sexually assaulting two former players— former National Hockey League (NHL) player Theoren Fleury and Fleury's younger cousin, Todd Holt— while coaching them two decades previously. This arrest and conviction came on the heels of a previous prison sentence James received in 1997 for sexually assaulting three other young Canadian hockey players he had coached including Sheldon Kennedy, another former NHL hockey player. While a brief national spotlight was placed on Graham James and his athlete-celebrity victims, very little media and academic attention has been given to the larger issue of sexual violence in amateur Canadian sport. Using this high-profile case, this paper seeks to provide a preliminary enquiry into the public perceptions and responses to how the Canadian Criminal Justice System responds to sexual violence in Canadian youth sport. Public perceptions of this incident are explored through an unobtrusive analysis of 1024 comments posted electronically following an online media article pertaining to the violent acts and initial two-year sentence (CBC News, 2012).

This paper begins with a review of the literature on the existing empirical research pertaining to sexual violence, abuse, and harassment in sport. The unobtrusive methodological approach used in this study will then be highlighted. Through the unobtrusive data analysis, several themes emerged surrounding public perceptions of the legal handling of sexual violence in sport that will be discussed in detail. These themes include: a) arguments for a harsher punishment, b) perceived failings of the Canadian Criminal Justice System, c) criticism of Canadian political parties and current government, d) indifference to the sentence, e) appreciation of the courage of the victims in coming forward with their complaints, and f) perceived failings of sports organizations in preventing sexual abuse.

## 2. Literature Review

Few academic literatures are as vast as the topic of sexual violence. Common areas of inquiry on sexual violence include: sexual assault prevention<sup>1</sup>, experiences of sexual violence, harassment, and abuse<sup>2</sup>, reporting rates of sexual assault<sup>3</sup>, relationships between drug use, sexual offending, and sexual victimization<sup>4</sup>, mental health aspects of recovering from or surviving sexual assault<sup>5</sup>, investigation of sex crimes<sup>6</sup>, treatment approaches for survivors of sexual violence<sup>7</sup>, male roles in the perpetration of sexual violence<sup>8</sup>, Feminist Theory applications to sexual violence<sup>9</sup>, policing of sex crimes<sup>10</sup>, legal processes related to sex crime trials<sup>11</sup>, and legal reform of Canadian sexual assault laws<sup>12</sup>.

While important and compelling, the existing literature on sexual violence in sport has yet to develop and keep up with the larger body of sexual assault literature it is situated within. Some of the topics that have been researched include: the disproportionate perpetration of sexual violence by male athletes<sup>13</sup>, prevention and protection strategies for women and children in sport<sup>14</sup>, noting the absence of empirical research and theoretical analyses on sexually abused male children in sport<sup>15</sup>, examining intimate relationships between athletes and coaches<sup>16</sup>, theoretical explanations for sexual harassment and abuse in sport<sup>17</sup>, studies on the occurrence of sexual harassment in specific sporting contexts and organizations<sup>18</sup>, institutional and community responses, or lack thereof, to sexual violence in sport<sup>19</sup>, examinations of sexual violence in the context of hazing in sport<sup>20</sup>, and emotional experiences of the researcher in study sexual abuse in sport<sup>21</sup>.

One limitation of the existing literature on sexual assault in sport is that the vast majority of research has been conducted in Europe, with some important Canadian research completed but not a significant quantity of research by comparison. Another limitation is that much of the research has relied upon psychological theories and explanations drawing on individual case studies with minimal attention to social structures and cultural contexts of sport and the society it is situated within, with minimal consideration given to the role of the

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<sup>1</sup> Anderson & Whiston, 2005; Casel & Lindhorst, 2009; Fisher, Daigle, & Cullen, 2008; Jones & Cook, 2008; Koss et. al, 2003; Lonsway, 1996.

<sup>2</sup> Anderson et. al, 2004; Arata, 1999; Bohner, 2009; Campbell 2008; Campbell et. al, 2001; Jordan, 2008; Lievore, 2005; Peterson & Muelenhard, 2004; Williams & Holmes, 1981.

<sup>3</sup> Bachman, 1993; Rumney, 2006.

<sup>4</sup> Abbey et. al, 2004; Finch & Munro, 2005, 2007; Groeneveld & Shane, 1989; Horvath & Brown, 2007; McFarlane, et. al, 2005; McGregor et. al, 2004; Ullman, 2003.

<sup>5</sup> Bagley et. al, 1997; Campbell, 1998, 2008; Campbell, & Raja, 1999; Campbell, Dworkin, & Cabral 2009; Firsten, 1990; Ullman & Fillipas, 2001.

<sup>6</sup> Harris & Grace, 1999; Quinlan, Fogel, & Quinlan, 2011.

<sup>7</sup> Beres, Crow, & Grotell, 2009; Campbell, & Ahrens, 1998; Campbell & Bybee, 1997; Campbell, et. al, 2005.

<sup>8</sup> Berkowitz, 2002; DeKeseredy & Kelly, 1995; Kirkpatrick & Kanin, 1957; Murnen, Wright, & Kaluzny, 2002; Sanday, 1990; Schwartz, & DeKeseredy, 1997; Weiss, 2009.

<sup>9</sup> Brownmiller 1975; Clark, & Lewis, 1977; Dobash et. al, 1992; Frith, 2009; Maier, 2008; Quinlan, 2012; Russell, 1975; Sanday, 1981; Ward, 1995

<sup>10</sup> DuMont, Miller, Myhr, 2003; Griffiths, 1999; Jordan, 2004.

<sup>11</sup> Busby, 2007; DuMont & Myhr, 2000; Gotell, 2007, 2002; McIntyre et. al, 2000; Randall, 2008; Sanday, 1996; Temkin, 2002; Tempkin & Krahe, 2008.

<sup>12</sup> Chase, 1984; Clark, & Hepwoth, 1994; Cohen & Backhouse, 1980; Denike, 1994; Roberts & Gebotys, 1992; Roberts, Grossman, & Gebotys, 1996; Sheehy, 1996.

<sup>13</sup> Benedict 1997; Benedict & Klein 1997; Benedict & Yaeger 1998; Caron et al. 1997; Crosset et al. 1995; Leahy et al. 2002; Pappas et al. 2004; Robinson 1998; Smith & Stewart 2003.

<sup>14</sup> Boocock 2002; Brackenridge 1998, 2001, 2003, 2004; Fasting et al. 2008; Hartill & Prescott 2007; Kirby et al. 2008; Leahy 2008; Lyons 2002; Parrot & Cummings 2004; Welch 1997.

<sup>15</sup> Hartill 2005, 2008.

<sup>16</sup> Fasting and Brackenridge 2009; Nielsen 2001.

<sup>17</sup> Brackenridge 1994, 1997, 2001; Kane & Disch 1993.

<sup>18</sup> Brackenridge & Fasting 2002; Cense & Brackenridge 2001; Donnelly 1999; Fasting et al. 2002, 2004, 2007; Kirby 1995; Kirby et al. 2000; Marks et al. 2011; Volkwein-caplan & Sankaran 2001; Volkwein-caplan et al. 1997, 2002; Yves et al. 2008.

<sup>19</sup> Jackson 1991; Lefkowitz 1997; Markovitz 2006; Parent 2011.

<sup>20</sup> Kirby & Wintrup 2002; Robinson 1998.

<sup>21</sup> Brackenridge 2003.

Criminal Justice System in responding to these crimes. A third limitation, as described in detail by Hartill (2005, 2008), is that research on male victimization related to sexual violence in sport is almost non-existent. Fourth, minimal attention has been given to examining the perceptions the Canadian public have on the ways in which the Criminal Justice System handles sexual violence in sport. This study contributes to each of these limited areas of research on sexual violence in sport, and research on sexual assault more generally.

### 3. Methodology

Following Webb et. al (2000), this research uses an unobtrusive method of data collection, which is sometimes referred to as a non-reactive method. This method requires no human contact for the purposes of developing research data and instead relies on existing information as data. Furthermore, the existing information that is used as data has typically not been created with the intent that it will be used for academic research. The responses provided by readers of a media article are unobtrusive in that the respondents did not write their responses with the belief or purpose that their responses would be used for research purposes.

The data used for this paper consists of 1024 comments posted electronically following a media article pertaining to a report on Graham James's 2012 sentencing. The data collected was coded using what Glaser and Strauss (1967) term "open coding", which involved the purposive thematic coding of all comments pertaining to perceptions of the legal handling of sexual violence in youth sport in Canada. In some instances, different sections of specific comments were coded into different themes. This unobtrusive approach allowed for the accessible examination of public perceptions of the legal handling of sexual violence in Canadian sport through the case of *R. v. James* (2012). The reactive potential within face-to-face interviews, surveys and experimental designs was thus avoided through this approach. Furthermore, this approach allowed for a large sample of participants with 1024 comments being posted.

A limitation of this methodology is that the study's accuracy in depicting public perceptions of the legal handling of sexual assault in youth sport is limited to the data that were used. The use of unobtrusive data prohibited the possibility of questioning the individuals who posted comments further about their perceptions. Furthermore, no demographic information was available on who the individuals were who posted comments, such as whether they were male or female, sports fans or not, Canadian or non-Canadian, their age, or other potentially relevant variables to consider. Furthermore, this study only examines a single case study involving one perpetrator and several athletes. It is thus limited in scope in that it does not examine the countless other cases of sexual violence in Canadian sport that generate less publicity and public response. Given these limitations, this paper is not intended to provide a final say on the topic of public perceptions of the legal handling of sexual violence in Canadian youth sport but rather, the aim is to provide a preliminary examination of the topic using a novel methodological approach that could be followed up with further qualitative and quantitative approaches to social enquiry.

### 4. Background

The sentencing hearing of *R. v. James* (2012), took place on March 20<sup>th</sup>, 2012 in the Provincial Court of Manitoba. James was living and working in Mexico when he was charged with sexually assaulting Theoren Fleury and Todd Holt across the time span of 1983 to 1994. James willingly returned to Canada and was held to face the charges. On December 7<sup>th</sup>, 2011 James entered guilty pleas for both of the sexual assault charges laid against him. He was sentenced to two years in prison. In the time since this unobtrusive study was conducted that sentence has been increased to five years following an appeal by the prosecution.

Graham James was previously convicted January 2<sup>nd</sup>, 1997 for the sexual assault of Sheldon Kennedy and another unnamed player. James was sentenced to three and a half years in jail and then paroled in 2001 for those crimes. He then received a pardon for the offences on January 8, 2007. After this, he returned to coaching in the country of Spain, where he was the assistant coach of the national hockey team, before then moving on to live in Mexico. Since his first conviction in 1997, James has not been reported for the commission of any recent sexual offences or related crimes. During his first prison term, James completed a sex offender rehabilitation program and elected to remain in the program voluntarily delaying an early parole. During this program it has been reported that James came to the realization that the acts he committed were forced upon unwilling individuals.

Before his arrest in 1997 on the initial sexual assault charges, Graham James had an illustrious coaching career in Canadian junior hockey. His coaching career began in 1979 coaching the Fort Garry Blues (The Star, 2012). He then coached in the Western Hockey League (WHL) over the next decade and a half. During that time, he achieved great success as a coach, winning WHL titles in 1989 and 1993 with the Swift Current Broncos. In 1989 James was named The Hockey News "Man of the Year". During this run of coaching success he was privately sexually abusing players that he coached.

Multiple victims involved in this case were under the age of 18 when the sexual assaults started. During the time of the offences, James was in a position of authority and trust over each of the victims involved. James used this authority to manipulate the victims to give them no choice but to conform or lose everything that they had worked towards. The assaults were repeated over many years to multiple victims, and at times were overlapping with another victim. Each case had similar patterns, which showed that James groomed each victim into a position in which they could not refuse his advances. As presented in the victim impact statements written by Theoren Fleury and Sheldon Kennedy, the damages were long term and devastating to the victims as well as the people around them.

All of the victims who have come forward were at one time promising hockey players. All three named victims were eventually drafted into the NHL and due to the public stardom of the victims this case received widespread media attention. The case against James could be the highest profile sexual assault case in Canadian history, spanning fifteen years. During this time James has been publically scrutinized through the various media sources over a prolonged period of time, while the victims of his crimes have also remained in the spotlight.

## 5. Research Findings

Not every comment that was posted was coded into a theme. Many of the comments were simply not of direct relevance to examining public perceptions of sexual violence in youth sport in Canada. For example, many posts identified spelling and grammar mistakes made by other commenters. Many other posts were links to other articles on the Graham James case. Others were factual statements on the basic workings of the Canadian Criminal Justice System. Some comments on religion were made that appeared out of context. Other comments made no discernable sense at all. The vast majority of comments did, however, provide insight into how the public perceives the legal handling of the sex crimes perpetrated by Graham James against young hockey players that he coached.

### 5.1 Arguments for a Harsher Punishment

The most common response by commenters was that the sentence Graham James received was too lenient. 292 commentators argued that two years in prison for repeated acts of sexual assault and exploitation of young hockey players is not a sufficient penalty. Of these comments on sentence length, the most frequent response was to propose a longer sentence that would be more just and fair. The current lenient sentence was perceived to “issue hunting licenses for sexual predators in Canada.”

Many indicated that a life sentence would be the only fair response. According to one commenter, “I have every reason to believe that James should be locked away for the remainder of his natural life, because I've seen what happens to the victims. They serve life sentences, they may heal, but they serve life sentences.” Similarly, another wrote, “2 years in prison for him...the rest of their lives in prison for his victims. The world is broken.” Another wrote, “How this judge can give this monster a slap on his fingers for the atrocities he has committed against these young boys makes me physically sick to my stomach. Graham James should be locked away for the rest of his life for what he has done.”

Others indicated that a life sentence would not be enough. In Canada, a life sentence is currently 25 years in prison without parole. Many commenters indicated that he should never be allowed to be eligible for parole and should spend the rest of his life in prison. One commenter wrote, “Two years is about 200 years short.” Another wrote, “There are 2 numbers missing, it should read: 222 years.”

Others proposed even more severe punishment than the length of time he should spend in prison. Several commenters indicated that they thought the death penalty should be brought back in Canada to punish child sexual offenders. One commenter wrote, “The penalty should have been death.” Others suggested that the Canadian Criminal Justice System should revert back to the use of torture as a public spectacle and deterrent, such as, “James deserves to be whipped in public.” Others made comments like “James deserves some good ol’ fashioned prison justice” whereby he is regularly assaulted violently and sexually by other prison inmates while serving his time in prison.

### 5.2 Perceived Failings of the Canadian Criminal Justice System

The second most common theme overall, with 215 comments, was that the Canadian Criminal Justice System has failed in handling sexual violence in youth sport. Many commenters directed criticism directly at the justice system for failing to ensure that justice is being done. One commenter wrote, “It's not the justice system anymore, it's just the system.” Another wrote, “Our justice system is not a justice system at all. It is a catch and release system.” Another simply stated, “Our Justice System is failing us!” Many referred to the Canadian

Criminal Justice System as “a joke” suggesting that Canada merely has “a pretend justice system.” Another commenter came to the conclusion that in Canada “apparently justice truly is ‘blind’, deaf, dumb and stupid.”

A major failing in the Canadian Criminal Justice System that many commenters perceived was a belief that offenders seemingly have more rights than victims of child sexual abuse. One commenter wrote, “In Canada victims are punished and criminals are protected!” Another wrote, “The justice system in this case grossly failed the victims and everyone in our country.” Similarly, a commenter stated, “To his victims I say I am very sorry that you have been abused again, this time by ‘the system’ itself. You were abused, you were harmed and you deserved to be treated better by the Courts.” Another wrote, “Another travesty committed by our justice system. The victim has no one to protect them. That is what the justice system is supposed to do. Sometimes you have to ask, who is worse, the offender or the justice system in some cases.”

Another perceived failing of the Canadian Criminal Justice System that garnered many comments centered on the competency of the judge who presided over the trial and decided on the two year sentence. One commenter wrote, “this judge sentenced herself to a lifetime of shame.” Another suggested that, “The people of Canada expect more from their judges who are supposed to represent fairness for crimes committed. Do us all a favour and get off the bench Judge Carlson.” Another wrote, “What a travesty, the judge should get 2 years in prison.”

### *5.3 Criticism of Canadian Political Parties and Current Government*

The third most common response was to direct criticism to one of the three main political parties in Canada: Conservative Party, Liberal Party, or New Democratic Party. 124 comments were made that were in criticism of a Canadian political party. The most common of these responses was to suggest that the perceived lenient sentence and failings of the Canadian Criminal Justice System could be traced back to a single political party. Different commenters pointed their fingers at different political parties, with the Conservative Party taking the most criticism as the party currently in office in Canada.

Among the criticisms waged against Stephen Harper and his Conservative Party, the most common was to criticize Bill C-10, which centers on getting tough on crime and imposing mandatory minimum sentences for certain offences. Many commenters responded to perceived inconsistencies in the Conservative initiative to develop safer communities. The most common inconsistency pointed out by commenters was the new penalties now imposed on Canadians for marijuana-related offences; a drug perceived by many to be less harmful than alcohol, nicotine, and even caffeine. One commenter wrote, “In Stephen Harper’s Canada, if you want to get a proper sentence for a convicted sex offender who destroys the lives of pubescent and late pubescent children and men, you have to indict him with a marijuana-related offence.” Another wrote, “Perhaps if someone had planted some weed on this guy he would have done more time. The government has the priorities for public safety messed up.” Similarly, another stated, “Stephen Harper and The Cons new campaign slogan: Tough on Pot Plants, Soft on Pedophiles.”

### *5.4 Indifference to the Sentence*

The fourth most common response in general was to express indifference to the two-year sentence that Graham James received. 43 respondents made comments that showed some indifference to the sentence. One common response was explanations for how the judge had acted within her constraints of law, precedent, and procedure. While these respondents might not have agreed with the sentence length, they expressed understanding for why they thought it should be in place.

Others thought the sentence length was not of central importance, as punishment was not perceived as an effective deterrent for sex offenders. Arguing this, one commenter wrote, “If the torch-and-pitchfork crowd can point to one instance in the history of humankind where harsh sentences have prevented crime, this would be the time and place to bring it forward.” Another commented, “There is no sentence long enough or harsh enough to make people happy. It is widely known that longer, harsher sentences don’t function as deterrents, especially in cases of sexual abuse, which is widely believed to be a mental illness. Even a death sentence from James won’t stop the next abuser from preying on kids.”

Many others also expressed a belief that the time in prison that Graham James serves will be much harsher than the experience of most inmates because of the heinous crimes he has committed. Detailing this, one commenter wrote, “Being that it’s 2 years, it’s going to be a long 2 years, because in PC [protective custody], even the other guys in PC hate ‘kiddly diddlers’. He’s going to have a lot of fun eating every meal and wondering what’s in it every day.” Another commented, “Just make sure he is integrated into the normal inmate population and not segregated. See how the predator becomes the prey.”

### 5.5 *Appreciation of the Courage of the Victims*

A fifth common theme that emerged from the comments was to express appreciation to the victim's for having the courage to come forward with their complaints of sexual abuse. 33 comments of this sort were made, many by individuals who identified as victims of child sexual abuse themselves when they were younger. One commenter wrote, "These men were very brave to come forward and expose Graham James. They have done what they could and hopefully having the issue out in the open will bring discussion and change for the future." Another wrote, "When will Sheldon Kennedy be given the Order of Canada? He stood up to this pig years ago, and at great personal risk, laid it out there." And later, "I for one think the man [Kennedy] deserves a medal. I could not be more impressed." Another proclaimed, "As great as their careers were, nothing has approached the courage and tenacity these two have shown in very publicly putting this creep back on ice for another two! Hats off, boys!"

### 5.6 *Perceived Failings of Sports Organizations in Preventing Sexual Abuse*

A sixth, and final, theme that emerged from the comments was a belief that the sex crimes of Graham James have exposed significant flaws within the institutions and organizations that govern youth sport in Canada. While only 19 comments were posted on this theme, it provides an important shift to focusing on how similar crimes might be prevented rather than simply addressing how they should be responded to after they occur. One commenter asks a series of questions: "Shouldn't more be done to prevent such acts? How did James do this in the first place and get away with it for so long? What were the other coaches doing? Why wasn't this prevented? What is being done now in Canadian sport to make sure it doesn't happen again?" Another commented, "Let's apply reason. Hockey Canada should accept some responsibility for this. This should have been prevented and never happened." Another, "There is such a lack of concern for things like this in sport that James will be back coaching in no time. Something has to change." One parent of youth athletes drew the conclusion, "I am pulling my children out of any sports that do not let me examine and ask questions about the leaders."

## 6. Conclusion

The general sentiment of commenters is of anger, disappointment, confusion, and shame. There is an overarching sentiment that the crimes of Graham James are appalling and have been mishandled by the Canadian Criminal Justice System. A further theme that could be added would be one of national shame to be a Canadian in the aftermath of Graham James's sex crimes against young hockey players and the legal response that they have generated. One commenter wrote, "Internationally, Canada has been shamed." Another wrote, "This is Canada's game, and James made a mockery of it. Hockey will never be the same. The absurd leniency of the courts has only added salt to these wounds. I am ashamed to be a Canadian after all of this." One commentator suggested that in the wake of this, "Canada is basically a haven for pedophiles." Another commenter stated, "I do not recognize this Canada."

There is a general sense that the overall legal handling of this case was not in keeping with the values of Canadians. This outcry, however, does not appear to have gone unnoticed by the Members of Parliament that form Canada's government (Leblanc, 2013). The federal government, under the leadership of Stephen Harper, has recently proposed a toughening of laws in the Canadian Criminal Code for adults who commit offences against children and youth in Canada. These changes will likely mean longer minimum sentences for offenders, like Graham James, who use sport as a vehicle to sexually prey on young athletes. Furthermore, on appeal by the prosecution in 2013 James's sentence has been increased to five years in prison.

While tougher penalties for child sexual offenders appear in keeping with the values and perspectives of Canadians based on the results of this study, there is still much work to be done in remedying the problem of sexual violence in amateur Canadian sport. The results of this study should also encourage providing increased support for victims of sexual violence in sport, as well as strengthening policies and strategies to help prevent sexual violence within amateur sports organizations.

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