

**Language Used to Characterize Sexual Assault:
Report to the Ministry of Women's Equality
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SUMMARY OF PROJECT ACTIVITIES

Between January and March, 1993, we examined the language of legal judgements in sexual assault cases. We were interested in two aspects of language use in these judgements: (a) specifically, whether sexual assault was described as inherently violent and (b) more generally, what kind of vocabulary was used for acts of assault. The present report describes our methods and findings.

Between April and June, we worked on making our results useful to the judicial system. Our target group were Crown Counsel, because they in effect represent the victim. While the present report will be available to them, we learned quickly that most Crown Counsel are too busy to read a long or detailed research report or even to attend special workshops. Therefore, we concentrated on writing and publicizing a highly condensed summary that focused on their needs and interests (Appendix D). This Brief Report has been sent to all Crown Counsel in B.C. In addition, a one-paragraph summary will appear in their newsletter.

We are currently rewriting the Brief Report for other groups who have expressed interest: SWAG's Court Monitoring Program; the association of university Traffic and Security offices across Canada; RCMP training branch; etc. We are also continuing to analyze our database for publication.

INTRODUCTION

In 1983, Bill C-127 replaced the old rape and indecent assault offences with three sexual assault offences. Whereas the old laws connoted carnal knowledge, the new offences emphasize the violent or abusive nature of these acts. Sexual assault is a unilateral act that involves the violation of one person by another; it is not an intimate or mutual experience between persons.

Although the purpose of Bill C-127 was to shift the emphasis of the law away from its historical definition of rape as a sexual, moral issue to treating it as assault, the "courts have had trouble shifting their focus from morality to violence" (Ruebsaat, 1985 p. 107). One way to assess court's treatment of sexual assault is to examine the language used within the criminal justice system to describe sexual assault. How is sexual assault characterized? Is the terminology used consistent with the legal definition of sexual assault?

In sexual assault cases, legal decisions often rely on oral evidence and arguments presented during the trial. We believe the language used to portray sexual assault is an important issue because of the effect it can have in shaping how an event comes to be perceived and understood by others. As Danet (1980) pointed out,

one cannot separate what happened from language that is used to describe or explain what happened. When the meaning of the act is ambiguous, the words we choose to talk about it become critical.

(p. 189)

Our language provides us with a number of ways to refer to sexual acts. Although these may initially appear to be equivalent options, their dictionary meanings reveal that these words and phrases are not impartial labels. All terms carry with them a host of connotations. The choice of a particular term can implicitly suggest that the acts should be interpreted in a certain way. For example, a sexual act could be described as "making love", "vaginal penetration", or "rape". Each of these descriptions leads to a different interpretation of the act. The first implies an act of love and affection. The second characterization provides a strictly physical description of what the act involved. The term "rape" defines the act as a violation of the person's body.

The importance of language in sexual assault cases has been noted by others. The report of the Manitoba Association of Women and the Law on Gender Equality in the Courts (1991) contended that "the use of terminology such as 'fondling' or 'cuddling' to describe sexual assault has the effect of sanitizing and minimizing the seriousness of the assault" (p. 5-42). Gunn and Minch (1988) stressed the need for the judiciary to "use terms that are consistent with the new [1983] law" (p. 108), because the old terminology may trivialize the violent nature of assault.

This report on a project funded by the B.C. Ministry of Women's Equality during January - June 1993 describes our investigation of the language used to characterize sexual assault in trial and sentencing judgements. The objectives of the study were:

- (1) to locate all trial and sentencing judgements in B.C. sexual assault cases listed in Quick-Law;
- (2) to analyse certain anomalous themes in these texts (in particular, treating the assault as sex rather than as assault); and
- (3) to analyze the extent to which the courts recognize the violence of sexual assault.

In this report, we outline our assumptions and method; describe the lexicon identified in the judgements; present the results of the violence analysis, which focused on the relationship between references to violence and outcome of the trial; and discuss the implications of the results for prosecution of sexual assault cases, with recommendations for workers involved with sexual assault victims. The Appendices provide fuller details of the judgements, scoring systems, database, and report to Crown Counsel.

Assumptions Underlying the Analysis of Language Used in Judgements

We used Quick-Law as the most economical means for studying language use in sexual assault cases¹. Our analysis of the language used in the judgements was based on two important assumptions: First, we hold that language is important in and of itself. Language is not merely a reflection of individual thought; it has the power to create realities and to affect events. As discourse analysts, we recognize that language has a pragmatic, social impact beyond merely representing what someone thinks. This is

particularly true in law, where written words in effect become the law to be used in future cases.

Language is important because of the impact it may have on the outcome, especially in cases where the verdict is decided mainly on the basis of the oral evidence that is presented in the trial. How the act is described may influence whether it is viewed as a criminal or non-criminal act. Language that depicts the events as a non-violent sexual act may reduce the likelihood of conviction. Terminology that minimizes the violence may lead to lower sentences for those convicted. This may affect police willingness to lay charges.

The language used by the courts may also shape the public's perception of sexual assault. Of particular concern is the possible effect it can have on women who have been sexually assaulted (whether they report the assault or not). Language that depicts the event as something other than assault may increase the general reluctance of complainants to proceed with the prosecution of sexual assaults. At the very least, it must be devastating to complainants to hear their ordeal depicted in ways that are completely contradictory to their experience. The use of terms that imply a non-violent sexual act may also tell the public (including both convicted and potential assaulters) that the courts do not view sexual assault as a serious crime. Altogether, the use of language that minimizes the seriousness of the offence raises questions as to whether justice is served.

Second, we assume that the language used in the judgements is a reflection of the language used by all participants and not just the views of particular judges. Judgements typically include summaries of testimony and of questioning by the lawyers as well as the judge's reasons for the decision, so the language found in the judgements may be that of Crown counsel, defense, the complainant, the accused, or the judge. Thus, we examined these judgements not to study judges but to identify a lexicon--to discover for the first time the range and kinds of terms that are available to describe these acts.

Database

Using Quick-Law (which covered 1985 to early 1993²), we identified all B.C. judgements for sexual assaults that involved female complainants and that also included a

description of the facts of the case (e.g., excluding appeals on points of law). There were 76 such judgements, which are identified in Appendix A. The charges included sexual assault as well as sexual offences such as sexual touching, intercourse with a female under the age of 14, and indecent assault. In the cases we found, there were 12 acquittals and 64 cases where the accused was found guilty or pleaded guilty.

Method

Two independent analysts located references to the alleged act of assault using a set of rules that clearly specified what was to be included in the database (e.g., we excluded descriptions of mental states, previous convictions, actions leading to the alleged assault, and consequences of the act). Examples of references that were included are descriptions such as "intercourse", "fondling", "French kissing", "assault", "indecent assault", or "this offence". The analysts then used a second set of rules to categorize the descriptions according to its appropriateness for assault. These categories are explained in the following sections. Any disagreements between the two analysts were identified and resolved. Appendix B contains a complete description of the rules for locating the descriptions and the rules for categorizing them. The case-by-case reliabilities (percentage of agreement between the analysts in locating and classifying the references) are presented in the last two columns of Appendix A.

IDENTIFICATION OF LEXICON FOR CHARACTERIZING SEXUAL ASSAULT

Characterizations of the act were classified as inappropriate, neutral, or appropriate--from Crown Counsel's point of view, within an adversarial legal system. That is, in prosecuting the case, Crown is taking the position that the accused is guilty; certain usages are consistent with and appropriate to this position (that the accused committed an assault and not a consensual sexual act). Defense counsel would take the opposite position, and other parties might wish to avoid either of these for a more neutral position. Therefore, inappropriate characterizations used language that is inconsistent with Crown's position that the act was one of assault (e.g., descriptions of the act that use terms implying affectionate or erotic behaviour). Neutral characterizations provided only a physical description of the actions that took place; they are the closest one can come to

an "unbiased" description of the acts. Appropriate characterizations portrayed the act as one of assault and violence.

Once all acts had been located and classified, the principal investigators reviewed and refined the classification. Two changes were made to the classification system. (1) Some characterizations that had been classified as inappropriate (because of their emphasis on sexuality) included terms used in the Criminal Code (e.g., anal intercourse, sexual nature, the sexual act). Legal terms or quotes from the Criminal Code were also found in some appropriate characterizations (e.g., touching; violating the sexual integrity of the victim). All characterizations containing terms used in the Criminal Code were moved to a Legal category. (2) Sexual terms that had initially appeared relatively neutral (e.g., intercourse, oral sex, fellatio) were moved to the inappropriate category because their dictionary definitions are sexual (e.g., the Shorter Oxford English Dictionary defines "intercourse" as "sexual connection", with strong connotations of communication and reciprocity). A complete final listing of the terms we found and how we classified them is given in Appendix C.

The analysis revealed many usages that were strikingly anomalous (in view of the 82% guilty rate in the cases examined). In many instances, the language used to describe the sexual assault created unexpected (and perhaps unintended) meanings and implications. We also found examples of language that depicted the acts in ways that were consistent with the definition of sexual assault. Table 1 (next page) provides examples of the ways sexual assaults were characterized in judgements. The purpose is both to illustrate the differences among terms used and to offer concrete examples that can be used (or avoided) in the prosecution of sexual assault cases. The connotations associated with various terms are discussed in detail in the next sub-sections.

Table 1. How Sexual Assault was Characterized in Judgements

Inappropriate Characterizations (Sexual Assault as Non-assault)	Appropriate Characterizations (Sexual Assault as Violence)	Neutral Characterizations (Physical Descriptions of the Act)
Language that implies affection The woman you made love to The accused started to caress you He was kissing me on the neck The accused would...use his hand to fondle her vagina	Language that depicts event as assault In other words you raped her The sexual assault itself is physical violence The offender started abusing the complainant	Nature of the Contact The acts of penetration; acts of vaginal penetration Placed his mouth on her mouth Then tried to put his tongue in my mouth He squeezed her breasts
Language that implies intimate sexual activity He tried to French kiss her Vigorous intercourse He engaged in cunnilingus He wanted more sex	Language that reflects use of force His actions show...a desire to force himself upon this woman The man attacked the complainant Bound her with that clothing	His hands were over the breast area Moved up and down and touched her between her legs with his fingers He began to lower himself toward her and she started to cry Rubbing the area around the opening of the vagina
Language that implies mutual consent They had sex on the bed She had sex with him She finally allowed him to place his penis in her mouth	Language that reflects harm done to the victim You then violated her vagina with your fingers and othe blunt objects Acts of degradation; acts of humiliation The ordeals suffered by the victim	Descriptions of other Actions The accused removed the complainant's bedcovers, jogging pants and underpants He...pulled her nightie up Use a tensor bandage to tie up either of these girls
Language that minimizes the assaultive nature of the acts In some respects it was more bothersome than it was serious The first rape of a young girl was accidental He seemed not to be able to leave them alone He had just misplaced his hand	Language that reflects the unacceptable nature of the accused's actions The offender's actions...was loathesome and despicable and must be strongly condemned Acts of depravity The man who molested her	He was on top of her for some five to ten minutes She awoke to find the accused's hand underneath her panties Pulled her hand up to touch his penis

OXYMORONS**Language which suggests that both consent and force were present**

Prior to the consent to the sexual intercourse, the accused, on his own admission, slapped the complainant across the face

She stopped struggling and... acquiesced..., although the intercourse was still without her consent

Language which depicts the event as forced sex

Compelled her to perform fellatio upon him

He forced her to fellate him

Inappropriate Characterizations

Sexual assault is a topic that all of us have difficulty talking about. This problem is compounded by the fact that we lack a vocabulary for describing sexual assault. Our everyday vocabulary consists mostly of terms that do not reflect the violent, non-consensual nature of sexual assault. We have many ways to talk about affection and consensual sexual activity but few alternatives for talking about sexual assault. As a result, the language used in sexual assault judgements often incorporated familiar terms found in our language for consensual sexual relations. Perhaps the most common of these terms is "fondling" which is often used to refer to touching of sexual parts. Terms such "fondling" or "caressing" however, characterize the act as **affectionate behaviour** (Shorter Oxford English Dictionary), which is clearly inconsistent with assault. Terms that connote love and caring misrepresent the true nature of sexual assault. By using them, the speaker (or writer) is implicitly defining the acts in question as non-assaults.

In other judgements, we found examples of vocabulary that was suitable to **intimate sexual activity** but inappropriate to sexual assault. A number of characterizations drew upon erotic terms, for example, "seduction", "blow job", "French kiss". Terms such as these imply the acts were sensual or sexually stimulating. Other terms such as "cunnilingus" or "fellatio" also occurred frequently. Although they may appear initially to be neutral, non-erotic terms, they are in fact terms for sexual acts and not acts of violence. That is, their connotations are sexual and the context they evoke is a sexual one; they do not make the hearer think of violence. Other characterizations are even more misleading because they imply a mutual activity. For example, "they had intercourse" implies that both parties were participants in a sexual activity. Even more inappropriate are characterizations that imply the complainant willingly engaged in the acts (i.e., consented). For example, "she had sexual intercourse with him" places the focus on the complainant engaging in the activity. In contrast, characterizations such as "he penetrated her vagina" or "he forced himself upon her" depicted the act in terms of what the accused did to the complainant. Note that the last example also conveys that the act was an assault and non-consensual on the part of the complainant. Using terms

that refer to consensual sexual activity to describe sexual assault obscures important differences between these two events. As Mahoney (1989) argued, describing rape as sex trivializes the violence and blurs the distinction between voluntary normal sexual relations and hostile, coerced violations of bodily integrity. (p. 211)

The use of sexual terms puts the violent acts into a framework of normal sexual activity--activity that is non-violent and mutually consensual.

They also cast the act as an expression of sexual desire, whereas Groth, Burgess, and Holmstrom's (1977) analysis of rapists' motivations revealed that rape was motivated more by power or anger than sexual desire. They concluded that

rape, then, is a pseudo-sexual act, a pattern of sexual behavior that is concerned much more with status, aggression, control, and dominance than with sexual pleasure or sexual satisfaction. It is sexual behavior in the service of nonsexual needs. (p. 1240)

Furthermore, Marolla and Scully (1978) pointed out that

when rape is viewed as a sexual act, victim seduction becomes a possible element in the crime.... However, when rape is defined as physical assault, the [term] "sexual provocation" is hardly appropriate. Unless it could be proven that the woman was a practicing masochist there would be no case. (p. 306)

If sexual assault is defined as as type of assault, then the language should be consistent with this definition. To describe it otherwise is to offer an interpretation of the event as a non-assault.

An important subset of inappropriate characterizations found were depictions that **minimized the assaultive nature** of the act. In these descriptions the language fails to acknowledge the seriousness of the offence. For example, the repeated touching of the sexual parts of the accused's stepdaughters was described as "more bothersome than serious". This characterization suggests that acts were no more than mere annoyances. Victims do not find sexual assault mildly irritating. In another judgement, the rape of a young girl was described as "accidental" which almost implies it should be disregarded. Note that this characterization also implies that the accused was not responsible for the act. Other language can minimize the negative impact the acts had on the complainants;

for example, "he had just misplaced his hand" implies no harm was done to the victim. In another judgement the touching of the complainant's breasts was described as the "inspection of her breasts with a magnifying glass" (the accused was not a doctor). Phrasing the accused's actions as a quasi-medical procedure is an interesting example of how acts can be minimized by terminology. Characterizations that minimize the seriousness of the crime and negate the harm done to the complainant can only further confirm complainants' perceptions that the criminal justice system does not work for them. This may also send a message that sexual assault is not really a serious crime.

Some judgements also contained **oxymorons**, that is, phrases that were inherently contradictory. For example, some characterizations depicted the victim as consenting even though it was clear that the accused used force; for example, "prior to the consent to the sexual intercourse, the accused, on his own admission, slapped the complainant across the face". The use of "consent" in this way³ presents a contradictory picture in which the complainant agreed to the act and the accused used force to gain access to her body. Other characterizations acknowledged the use of force but still defined the act as a sexual activity (normally consensual), for example, "forced her to fellate him". Some oxymorons were simply absurd; for example, he fondled the girl's breast for his own sexual gratification", which portrays the sexual assault as an act of caring and affection toward another person, but that was used to satisfy selfish sexual needs. Oxymorons present a very confusing picture of the acts at issue. They mystify rather than clarify what transpired. Although judges may understand how "consent" can take place after force was applied, one can only wonder to what extent juries (and complainants) comprehend these legal issues.

In summary, our search for lexicon revealed a very wide range of terms currently used by the courts to describe sexual assault. Our goal was to find out how these acts are being described and to identify the implications of each description (as non-violent sex or as assault). Recognizing the implications of any particular choice of terms will help professionals both within the criminal justice system and outside to avoid using inappropriate language when describing sexual assault. In the following two sections, we

provide examples of language that can be used as alternatives to inappropriate characterizations.

Neutral (Physical) Characterizations

We have argued, so far, that inappropriate language defines the acts implicitly as non-assaults (i.e., as affection or as normal sexual activity. Neutral language found in judgements provided a **physical description** of the events that took place. These descriptions came the closest to providing an "unbiased" description, which did not connote either consensual sex or assault. Rather they focused on physical movements or actions that occurred (much like a technical or medical description). For example, "he began to lower himself" described the accused's movements towards the complainant, and "she began to cry" described the complainant's behaviour. Terms such as "insert" or "penetrate" were used to describe the placement of fingers or the penis into the vagina. We suggest that these characterizations are useful alternatives for portraying acts that are presently being described in affectionate, erotic, or sexual terms. Consider, for example, the difference between "he tried to French kiss her" and "he put his tongue in her mouth".

It is interesting to us that although there were many neutral descriptions of how clothing was removed, it was difficult to find examples of neutral physical of contact with the complainant's body. This strengthens our impression that the courts lack a vocabulary for describing the physical acts in a way that does not carry any affectionate or sexual connotations.

Appropriate Characterizations

The third group of references we found provided a description of the acts that conveyed the elements of sexual assault, which is the Crown's position. For example, some characterizations depicted the **violent** nature of the acts. These included the use of the terms "violent" or "brutal" as well as words that implied violence, for example, "he did rape". (Because "violent" is a singularly appropriate way to describe sexual assault, we decided to look at this term even more closely. The results of this analysis are presented later in this report, in the section on Sexual Assault as Violence.) Acts were also sometimes depicted in a way that made explicit the use of **force** either through words

such as "forced" or "attacked" or by terms that implied force, such as "cause her to submit" or "bound her with clothing".

We also found examples of descriptions that clearly acknowledged the **harm done to the victim**. Phrases such as "violated her vagina" or "ordeals suffered by the victim" portrayed the event in terms of the impact the assault had on the victim. These characterizations validate the complainant's experience of violence and strongly define sexual assault as assault rather than sex.

Other characterizations focused on the **unacceptable nature** of the accused's acts, that is, as immoral behaviour not tolerated in our society. These included descriptions of the actions as "loathsome and despicable" or as acts of "depravity". They send a very clear message to the accused (and to potential offenders and the general public) that the courts do not look favourably upon individuals who commit these crimes.

SEXUAL ASSAULT AS VIOLENCE

As mentioned earlier, one of the most appropriate characterizations of the act would be as **violent**. For this reason we chose to pay particular attention to this term. We searched all cases for uses of the terms "violent/violence" and "not violent/no violence"; see Appendix B. The results for each judgement are presented in Appendix D. In only one-third of the cases did any of these four terms appear. Of this group, 22 cases had been legally established as an assault. Surprisingly, half of these convicted sexual assaults were described as violent and **half were described as not violent**. Apparently, sexual assault is a kind of assault that is often described as non-violent.

Our impression is that the term "violence" is often reserved for force that is used to accomplish the assault rather than the assault itself. The MWAL's Gender Equality in the Courts (1991) report also noted that

the wording of the Criminal Code reinforces the notion that sexual assault is not of itself violent; violence is seen as an added factor. (p. 5-16)

The term "violence" also seems to be limited to actions that produce serious visible injuries. If a complainant was not visibly physically damaged as a result of the assault, the assault was not described as violent. We also found instances where the physical injuries incurred by the complainant were minimized. In one judgement, a bruise was

described as one "which may have been consistent with vigorous intercourse". Thus, even when there was evidence of force and physical injury, the violence was either not recognized or was seen as part of normal consensual sexual activity.

The language found in the judgements suggests that the courts are not consistently viewing sexual assault as violent. This is particularly surprising in view of the explicit intention of the 1983 Canadian law to treat sexual assault as violent per se. (The reader may notice an apparent time trend in Appendix D: More recent judgements are much more likely to describe sexual assault as violent.) Although sexual assaults that involve additional violence should be regarded as more serious offences, the violent nature of sexual assault itself should also be acknowledged. We suggest that additional violent actions should be referred to as **instrumental** or **additional** acts of violence, that is, instrumental or additional to the violence of the assault itself. This would enable the courts to recognize sexual assault as violent while still taking into consideration the use of additional violence to gain access to the complainant's body.

CONCLUSIONS AND RECOMMENDATIONS

Our analysis of sexual assault judgements suggests that the language currently used to describe sexual assault includes many terms that depict the act in ways that are inconsistent with assault. Examination of this language revealed terms and phrases that connote affection, sexual arousal, enjoyment, and no harm. We believe this language is used because our society lacks a vocabulary for talking about sexual assault. Although we have some terms to describe stranger rapes, most sexual assaults involve individuals who are known to each other. These are particularly difficult to talk about because some of the violent acts resemble actions that would provide sexual gratification for consenting partners. We lack appropriate terms for describing assaults in familiar places by individuals who were known and often trusted.

In our Brief Report for Crown Counsel (Appendix E), we strongly recommend that Crown be sensitive to and avoid inappropriate language⁴ and use alternatives that either connote assault or provide descriptions of the actions that do not connote consensual sex. In that report, we illustrated how the same act can be described in inappropriate, neutral,

or appropriate ways. Readers are encouraged to find other examples, although we suspect that alternatives will have to be deliberately developed, as we have begun to do.

We believe that the language used to characterize sexual assault is an issue that has relevance for all professionals involved in sexual assault cases (e.g., judges, Crown counsel, police, victim's assistance workers, rape crisis workers). Complainants themselves may lack an appropriate vocabulary for describing the events that occurred and may often resort to a language that does not accurately portray their experience. As the report and testimony of the complainant are critical elements of the legal process, it is essential that they be able to describe the acts in ways that reflect their experience. Those who work with the complainant within the legal system may inadvertently perpetuate the problem by using inappropriate characterizations--language that can also undermine successful prosecution of sexual assault.

The criminal justice system needs to be sensitive to the implications of the language used by all participants. Whether the act was an assault is an issue that should be decided by the courts on the basis of the evidence presented--not implicitly by the language used to talk about them. We hope that this report will aid in learning how to describe sexual assault more accurately.

In addition, our analysis of the judgements revealed that sexual assault is not consistently viewed by the criminal justice system as violence. Although it was encouraging to find examples where the violence of sexual assault was acknowledged, in other judgements only force used to gain access to the complainant's body was viewed as violence. Violence was often defined in terms of the physical actions taken by the accused prior to the assault, which ignores the violent nature of the sexual assault itself. Attacks on sexual parts of the body are just as violent as any means used to gain access to them. Even if there is no instrumental violence, the violation of one's sexual integrity is violent per se. We also believe that the definition of violence needs to be expanded to include the broad range of negative effects sexual assault has on the complainant, whether physical or psychological. Physical injury is only one effect of violence--not the only one.

Sexual assault is recognized as a serious problem in our society. We believe that the changes made to the Criminal Code reflect a general agreement that unwanted sexual assaults are violent assaults. We believe that the courts lack an appropriate vocabulary for talking about sexual assault and often resort to using language that depicts the event as consensual intimate activity. This depiction is inconsistent with the position of the law. If the event is defined as an assault, then the language must be consistent with that definition. Just as we would not talk about consensual sexual activity as acts of brutal penetration, we should not be describing sexual assault behaviour as fondling or making love. By drawing attention to the implications of language used to characterize the acts and the need to recognize the violent nature of sexual assault, we hope that this report will aid the courts in prosecuting these cases.

Footnotes

1. Although trial transcripts might provide a better database for the study of language within the criminal justice system, they are quite lengthy and expensive. We do, however, plan to look at language use in trial transcripts in the next phase of this work.
2. Cases were drawn from Quick-law during the months of February and March of 1993.
3. The meaning of consent given in the Criminal Code is "to be effective the consent to the assault must be freely given with appreciation of all the risks and not merely submission to an apparently inevitable situation". (CC-353, 1992). Section 265 states: "...no consent is obtained where the complainant submits or does not resist by reason of (a) the application of force to the complainant... (b) threats or fear of force to the complainant..." This meaning appears incompatible with the idea that she had been slapped prior to "consenting". Consent in this instance seems to refer to the fact that the act was eventually committed.
4. We are aware that lawyers may sometimes use the language of the accused as part of a deliberate strategy in questioning the accused's version of the incident.

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APPENDIX A: SUMMARY OF JUDGEMENTS ANALYSED

NOTATION

CHARGE:

SA	Sexual assault
SAWW	Sexual assault with a weapon
SACH	Sexual assault causing bodily harm
ASA	Attempted sexual assault
AGSA	Aggravated sexual assault
AI	Anal intercourse
AB	Attempted buggery
IA	Indecent assault
GI	Gross indecency
SI<14	Sexual intercourse with a person under 14
SI14<16	Sexual intercourse with a person over 14 but under 16 years of age
ITSP	Intimate touching for sexual purpose
INCES	Incest
R	Rape
(n)	Age of victim(s)

OUTCOME:

DO	Dangerous offender
G(F)	Found guilty
G(P)	Pleaded guilty
A	Acquitted

Note: If the outcome was identical for each count of a single charge (e.g., the accused pleaded or was found guilty of all of four counts of sexual assault), the charge is listed only once. Similarly, if the outcome is the same for all of the charges listed in the charge column, then the outcome (Guilty, Acquitted) is only listed once. If the outcome is not identical on each count of a charge, or if it differs for various charges (e.g., the accused is found guilty of indecent assault, but is acquitted on a charge of sexual assault), a 'respectively' condition applies between the charges and outcomes listed; i.e., the first outcome applies to the first charge, etc.

"LOCATION" = percentage agreement between independent analysts for locating descriptions of the act in this judgement.

"CLASSIFICATION" = percentage agreement between independent analysts for classifying descriptions (as inappropriate, neutral, or appropriate).

Judgement	Charge	Outcome	Location	Classification
BCJ#835.92	ITSP (<14)	POL	77	75
BCJ#937.92	SA	A	71	100
BCJ#881.91	SACH	G(P)(SA)	100	100
BCJ#922.91	SA	A	100	n/a
BCJ#980.91	SA (<14) SA (14<16)	A	80	96
BCJ#2054.91	SA	G(F)	100	100
BCJ#2941.91	SA (<14)	G(F) (DO)	80	100
BCJ#3602.91	SA	A	64.2	94.4
BCJ#3775.91	SA	A	64	100
BCJ#3783.91	SA, AI	G(F)	100	100
BCJ#433.90	AGSA	G(F)	92	96
BCJ#1008.90	SA	A	89	95
BCJ#1456.90	SA, IA (13-15)	G(P)	88	100
BCJ#414.89	IA, SA (<14)	G(P)	76.7	91
BCJ#155.89	SA	G(P)	75	100
BCJ#1774.89	SA, GI (<14)	A	83	100
BCJ#1247.88	SA	G(P)	75	85.7
BCJ#1259.88	SA, GI (<14)	G(F)	81.8	90
BCJ#1264.88	IA, SA, INCES, SI<14	G(F), G(F), A, A	73.3	90
BCJ#1299.88	SA	G(F)	57.9	91
BCJ#1676.88	SA	G(?)	100	75
BCJ#2178.88	SAWW	A	83	100
BCJ#2184.88	SA (<14)	G(P) (DO)	89.7	77.7

BCJ#2186.88	SA	G(F)	100	100
BCJ#2340.88	SA	G(P)	95.4	84
BCJ#2386.88	SA	G(F)	50	80
BCJ#2392.88	SA	G(P)	70	100
BCJ#2405.88	SA, SAWW	G(P)	--	--
BCJ#2497.88	SA	G(P)	100	100
BCJ#121.87	SA	A	73.3	100
BCJ#345.87	IA, SA, GI, SI<14	A	63	95
BCJ#418.87	SI<14, SA	G(F), A	100	100
BCJ#424.87	SA (<14) SA	G(P)	100	100
BCJ#872.87	SI<14, SA, GI	G(F)	93	100
BCJ#922.87	IA, SA (<14)	G(P)	86	92
BCJ#925.87	GI (<14)	A	82.4	85.7
BCJ#1220.87	SA	G(F)	100	100
BCJ#1246.87	SA (<14)	G(F)	100	100
BCJ#1258.87	SA	G(F)	82	100
BCJ#1313.87	SI14<16, SA	G(F)	85.5	88.7
BCJ#1983.87	SA	G(F)	73	100
BCJ#1996.87	SA	G(F)	75	100
BCJ#2006.87	ASA	G(F)	92	100
BCJ#2008.87	SA, GI, IA	G(?)	93	100
BCJ#2131.87	SA	G(F)	100	100
BCJ#2184.87	SA	G(F)	100	100
BCJ#2192.87	SA (<14)	G(P) (DO)	87.8	100
BCJ#2562.87	IA, SA (<14)	G(F)	100	95
BCJ#2563.87	SA	G(F)	90	90

BCJ#2564.87	SA	G(F)	100	100
BCJ#2585.87	SA (<14)	G(P)	100	100
BCJ#2731.87	SA	A	100	100
BCJ#2753.87	GI (<14)	G(P)	77	100
BCJ#2746.87	SA	G(F)	100	100
BCJ#2806.87	SA	G(P)	75	100
BCJ#2823.87	SA, SA	A, G(F)	91	95
BCJ#2839.87	SI<14, SA	A, G(F)	100	100
BCJ#2934.87	SA	G(F)	71	85
BCJ#2940.87	SA, SI14<16, GI	G(F)	100	100
BCJ#2941.87	SA (<14)	G(F)	100	100
BCJ#2991.87	SA	G(F)	100	100
BCJ#2996.87	SA	G(?)	100	100
BCJ#3001.87	SA (<14)	G(P)	100	100
BCJ#3015.87	SA	G(?)	100	100
BCJ#3024.87	SA	G(F)	100	100
BCJ#1012.86	IA (<14)	G(P)	100	85
BCJ#2534.86	SA	G(P)	100	100
BCJ#2545.86	GI, IA, AB, SA	G(F)	100	97
BCJ#2642.86	IA, R, SI<14, GI IA, R, SI<14, GI	G(F), G(F) -, G(F) G(F), A, A, G(F)	88.1	89.9
BCJ#2677.86	SA	G(F)	80.6	90.2
BCJ#2754.86	SA	G(P)	100	100
BCJ#2788.86	SA, GI	G(F)	73.1	100
BCJ#2801.86	SA	G(P)	80	100

BCJ#2842.86	SA	G(F)	66	100
BCJ#2910.86	SA (15)	G(F)	100	100
BCJ#2913.86	SA (<14)	G(P)	88	78
BCJ#2916.86	SA (<14)	G(P)	91	100

APPENDIX B: CODING SYSTEMS FOR ANALYSIS OF LANGUAGE USED IN JUDGEMENTS

RULES FOR IDENTIFYING REFERENCES TO THE ALLEGED ASSAULT

We are going to be examining two themes in the sexual assault trial judgments: characterizations of the assault and characterizations of the violence or force used in the assault.

(Note: We are not assuming that the language used in the judgement comes from the judge alone. For example, the judge may be using language adopted from Defence counsel, Crown counsel, and witnesses. We are not claiming to study judges' attitudes; we are studying the language they chose to use.)

1. Read the judgement through to get used to the type of language and how language is used in the judgement.
2. Pick one theme (e.g., characterizations of the act of assault) and highlight all of the relevant sections of the judgement.
3. If a sentence includes more than one highlighted term, count terms as only one example if they would all fall on the same classification list (appropriate, inappropriate, neutral or oxymoron). E.g. "kissing on the face and on the mouth". Separate the terms (count them as separate examples) if they belong on different classification lists.
4. **Put the rule number that you used in your decision to highlight a description or exclude a contentious description in the margin.**

Note: Highlight each theme in the specified colour (ACT = YELLOW)

- At this stage we want to err on the side of including too much for further examination. So, include enough context in the sections you mark that the passage makes sense when it is examined in isolation.

- BUT do NOT analyze language for other charges (i.e., not dealing with sexual assault) included in the same case, or for other cases cited by the judge.

Guidelines on What to Include:

I. Characterizations of the actual assault

Highlight the sections (in yellow) where the judge is characterizing the actual assault. Also locate and highlight any terms characterizing the assault, e.g., intercourse, assault.

We are limiting our examination of the assault to the sexualized assault, i.e., the sexualized touching of body parts that on other occasions are sexual (and not "simple" assault)

Include:

- (1) characterizations of the actual assault, e.g., "intercourse", "assault", "fondling", "he ... placed his hand in the area of her vagina"
- (2) any erotic terms, phrases, etc. used to characterize the assault
- (3) any violent terms, phrases, etc. used to characterize the act, i.e., assault
- (4) the legal terms, e.g., "sexual assault", "indecent assault", "offence", "act", etc. when they are applied to this particular case.
- (5) characterizations that the judges seem to be disowning or distancing themselves from (e.g., "The jury apparently rejected that evidence and found that this was not consensual bondage and intercourse, but sexual assault"). [We are interested in lexicon, not judges.] Include sufficient context.
- (6) global characterizations of the sexual assault, e.g., "this offence", "these offences", "this type of offence", "this act".

Do NOT include:

- (1) characterizations of the situation (e.g., met in bar, were at her house, the young lady was asleep at the time, etc.)
- (2) uses of legal terms (e.g., sexual or indecent assault) to refer to this type of crime in general. Exclude terms that do not refer to or include this case.
- (3) characterizations of lack of violence (these will be included in the violence analysis). E.g., "there is no suggestion of force or brutality", "there is no proof of adverse impact upon the victim".
- (4) characterizations of corollary violence, e.g., "he hit her", "he sat on her legs" (these would be included in the violence section)
- (5) characterizations (e.g., of previous convictions etc.) which have **INDIRECT** implications for characterizing the current case. E.g., "the **last** offence", "this **conviction**"
- (6) pronouns such as "it", "this", "they" when they occur in isolation; e.g., "the only reason IT was not completed"
- (7) pronouns which do not characterize the act. They do not provide any information about "what happened" or "how it happened".

These types of references are extremely non-specific. These pronominal phrases often begin with "what", e.g., "what had been going on", "what he did", "what has occurred to her", "what he had done". Other examples include: "advantage was taken of a situation which presented itself", "there was an abuse of this trust", "this type of behaviour", "this type of conduct", "the incident", "the situation he finds himself in". I.e., we don't know how the act is being characterized.

When you spot these phrases, highlight them in GREEN and write them on the NON-SPECIFIC PRONOUNS sheet in the legal discourse "ACT" file.

- (8) legal terms and phrases that describe but DO NOT CHARACTERIZE the act, e.g., "the case", "count", "charge", "incident".

Rules for Classifying References

Decision Tree – Propriety of Descriptions of Act

- A Is the term or phrase solely a legal term or expression (e.g., offence, assault sexual assault, sexual offence, such acts)?
- If YES ---> Include in APPROPRIATE category.
If NO ---> Go to Rule B
- B Does the term or phrase clearly indicate a strong sense of moral or social aversion for the act (e.g., "these depravities")?
- If YES ---> Include in APPROPRIATE category
If NO ---> Go to Rule C
- C Does the term clearly and solely describe the use of force or a lack of consent of the victim (e.g., rape, forced acts of buggery, forced her to fellate¹ him, not consensual bondage)?
- If YES ---> Include in APPROPRIATE category
If NO ---> Go to rule D
- D Does the term or phrase clearly and solely describe consent, mutuality, or reciprocity. (offering his penis to her mouth, they groped, fondle her while she was asleep, fondling the victim's vagina)
- If YES ---> Include in INAPPROPRIATE category
If NO ---> Go to Rule E
- E Does the common usage of the term imply consent, even though it may be used otherwise (e.g., intercourse, the sexual act, acts of oral sex, engage in sexual intercourse, form of bondage)?
- If YES ---> Include in INAPPROPRIATE category
If NO ---> Go to rule F

- F. Is the term or phrase a neutral physical description of the act (e.g., placed his hand in the area of her vagina, brief touching²)

IF YES ---> Include in NEUTRAL category

IF NO ---> Go to Rule G

- G. Is the phrase or expression an oxymoron (e.g., describing non-consent while at the same time describing or implying consent e.g., sexual intercourse against her will)

If YES ---> Include in MIXED or OXYMORON category.

If NO ---> Include in a separate list of unanalysable expressions (=H).

Note: Occasionally a located term will include portions affected by different categorization rules, e.g., "the offences were familial": "the offences" is a legal term (A), "were familial" implies consent, mutuality, or reciprocity (D or E). Include the entire term on the categorization lists twice, bracketing the incompatible portion. E.g. On the APPROPRIATE list; the offences [were familial] and on the INAPPROPRIATE list; [the offences] were familial. Thus we can separate the terms on the categorization lists but know that we located them together.

-
- 1 Terms such as "fellate" were later reclassified as inappropriate to assault because they clearly referred to sexual acts, so these examples would become oxymorons.
- 2 References to "touching" were later reclassified as legal (appropriate).

RULES FOR IDENTIFYING REFERENCES TO VIOLENCE

We are going to be examining two themes in the sexual assault trial judgments: characterizations of the assault and characterizations of the violence or force used in the assault.

(Note: We are not assuming that the language used in the judgement comes from the judge alone. For example, the judge may be using language adopted from Defence counsel, Crown counsel, and witnesses. We are not claiming to study judges' attitudes; we are studying the language they chose to use.)

1. Read the judgement through to get used to the type of language and how language is used in the judgement.
2. Pick one theme (e.g., characterizations of the act of assault) and highlight all of the relevant sections of the judgement.
3. **Put the rule number that you used in your decision to highlight a description or exclude a contentious description in the margin.**

Note: Highlight each theme in the specified colour (VIOLENCE = BLUE).

- At this stage we want to err on the side of including too much for further examination. So, include enough context in the sections you mark that the passage makes sense when it is examined in isolation.

- BUT do NOT analyze language for other charges (i.e., not dealing with sexual assault) included in the same case, or for other cases cited by the judge.

Guidelines on What to Include:

"An assault is completed if a person applies force intentionally to another without his consent or if a person attempts to or threatens by act or gesture to apply force to another if he has the present ability to affect that purpose" (Judge MacKinnon as cited in R vs. S., BCCA).

Descriptions of the violence (i.e., imposition of physical or psychological force) in the assault: Highlight the sections (in blue) where the judge evaluates or characterizes the violence (or lack of violence) within the act itself.

Include:

- (1) characterizations or evaluations of the violence of the sexual assault; i.e., is the act considered to be inherently violent).

This will include statements about: (i) the assault being non-violent, e.g., "there was no violence", "there was no additional violence", "his behaviour was not violent", "the indecent assault against the young girl is less serious because it involved no violence"; (ii) the assault being of minimal or lesser violence "there was not the violence which one finds in the two cases to which counsel have made reference"; (iii) the assault being violent.

Exclude:

- (1) descriptions of corollary violence or violence that is a means to an end. e.g., "it is more serious because it involved force", "the accused forced her into the bedroom and attempted to have intercourse with her", "there was no physical force, no coercion, or intimidation", "he forced her to fellate him", "there is no evidence that the accused ever struck the complainant or threatened her in any way", "the accused suddenly lunged at her, that they groped,...they struggled and he attempted unsuccessfully to kiss her".
- (2) general statements about violence. E.g., "violence under all circumstances is to be abhorred".
- (3) descriptions of the sexual assault which DO NOT characterize or evaluate the violence in the assault.
- (4) characterizations of the offender as violent. E.g., "he is a sadistic psychopath", "to control his tendency to violence".
- (5) characterizations which ambiguously refer to the sexual assault. E.g., "a man and woman's private life is their own, but when it involves violence from one spouse to another..."; here we do not know if the violence the judge is referring to is the simple assault, the death threats, the sexual assault, all three, or just one or two of these offences. Therefore, this would be excluded.
- (6) any statements which could be used to infer that the sexual assault was violent. E.g., "given the accused's apparent lack of any history of violence", "it may well be that he'll bear psychological scars of this for many years in the future", "Mrs. XXX sustained some bruises and a temporary limp", "there is no proof of adverse impact upon the victims I do not require such proof, I assume it"
- (7) terms which preserve the violence of the act but do not characterize or evaluate that violence E.g., "they were both forced acts of buggery", "assault", "sexual assault", "the accused forced her into the bedroom", "he forced her to fellate him"
- (8) descriptions or characterizations of the violence in other cases or charges

SCORING PROCEDURE

Using the search function in Wordperfect (F-2), search for "viole" (for violence or violent).

For every included occurrence of the words listed above, decide if the phrase in which the word appears characterizes or evaluates the degree of violence in the assault.

#For example, if you found "there was no violence", you would highlight this section because it characterizes the assault as non-violent.

APPENDIX C: INAPPROPRIATE, NEUTRAL, AND APPROPRIATE TERMS

LANGUAGE INAPPROPRIATE TO ASSAULT

Language that depicts sexual assault as acts of affection and love

He tried to make love to the wrong girl
I just rolled over and tried to make love to the wrong girl
The woman that you made love to

The accused started to caress you
Caressing her

Hugging her
Then he hugged me

Massaged her breasts

He kissed her holding her tight
Attempted unsuccessfully to kiss her
Kissed her on the breast and pubic hair
With kissing
The accused was kissing her
He kissed her at the neck
He was kissing me on the neck
He merely kissed (the complainant) goodnight
He tried to kiss me

The accused engaged in acts of fondling his step-daughters
Fondled her breasts
Fondling her sister's breasts
Fondling of the complainant's breasts
Fondle the girl's breasts
The offender's actions in fondling the breasts of a vulnerable victim
Fondling...the breasts of the complainant
He tried to fondle my breasts
The accused would...use his hand to fondle her vagina
He would fondle her vagina
Fondling of the child's vagina
She woke up to find the accused fondling her vagina
Fondling...her genitalia

Fondling of her private parts
He fondled her in the area of her breasts, which she called her chest, and then the vaginal area

The fondling
Primarily fondling
He engaged...in fondling the girl
The first fondling
That the fondling did take place as she says

Language that depicts sexual assault as the result of the accused's sexual urges

Having sexual gratification with this person
You wanted sexual gratification with this woman
To engage in your sexual gratification
For his own sexual gratification
Appetite for sexual contact
Sexual urges

Language that depicts assault as sexual intercourse between mutually consenting partners

They had intercourse
They had had intercourse
They did have intercourse once
They had sexual intercourse
They had sex on the bed

He invited the boys to masturbate

He thought he was having consensual sex with another woman

Language that conveys willingness on the part of the victim

She had sex with him
She had sexual intercourse with the accused
She and the accused had sexual intercourse

Had sexual intercourse with him on a regular basis
She finally allowed him to place his penis in her mouth

Language that depicts the sexual assault as an intimate relationship between the two parties

Sexual relationship

Sexual relationship between his sister

The relationship with the girl

Sexual interaction between two adolescents

Any sexual involvement with his sister

The accused testified that he had no sexual involvement with his sister

Any sexual connection with his sister

Oxymorons

Language which suggests that both consent and force are present

Prior to the consent to the sexual intercourse, the accused, on his own admission, slapped the complainant across the face

She says that she consented to have intercourse with him...because she was afraid that if she did not consent, he might use the gun

When she consented to have intercourse with him it was not out of fear of the gun

Language in which both force (or no consent) and sex are present

Compelled her to perform fellatio upon him

He forced her to fellate him

Sexual intercourse took place between herself and [the accused] without her consent

Additional Oxymorons

Fondle the girl's breast for his own sexual gratification

Use of "intercourse"

The intercourse

This intercourse

Full intercourse

Any intercourse

Including intercourse

To have intercourse

Have intercourse with her

For him to have intercourse

The first episode of intercourse

As intercourse was taking place

Sexual intercourse

Actual sexual intercourse

This sexual intercourse

Element of sexual intercourse

Commencement of the sexual intercourse

To have sexual intercourse

Having sexual intercourse

Having intercourse with her

Did have sexual intercourse

Had sexual intercourse with her

The accused had sexual intercourse

The accused had sexual intercourse with her

He had sexual intercourse with me

He had sexual intercourse with you

Engage in sexual intercourse

Engaging in sexual intercourse

He engaged in sexual intercourse with her

Episodes of sexual intercourse

Complete episode of sexual intercourse

The accused and the complainant had sexual intercourse

Attempted intercourse

Attempt to have intercourse with her

Attempted sexual intercourse

Attempted to have intercourse

Attempted to have sexual intercourse

Attempted to have vaginal intercourse

He attempted to have intercourse with her

Tried three times to have intercourse
Started to try and have sexual intercourse with her

Have intercourse with her
Did you have intercourse with her
He said he was going to have intercourse with her
He began to have intercourse with her
The accused was starting to have sexual intercourse with the complainant

Had brief intercourse with her
He in that instance had intercourse with her
He had sexual intercourse with his step-daughter
Each man having intercourse with her twice
Sexual intercourse took place for about 30 seconds
The accused began having full sexual intercourse with the complainant

Stopped short of intercourse
No act of intercourse
Unable to do so (have intercourse??)
Does not involve sexual intercourse
Did not involve actual intercourse, anal or vaginal
No sexual intercourse
There was no sexual intercourse
First act of intercourse
Acts of intercourse
Act of sexual intercourse
Later act of sexual intercourse with her
Acts of sexual intercourse
These acts of sexual intercourse
Two acts of sexual intercourse
The act of sexual intercourse
Having an act of sexual intercourse
He engaged in an act of sexual intercourse with the complainant
A completed act of sexual intercourse
This completed act of sexual intercourse

Language that depicts the sexual assault as a sexual event

An invitation of a sexual foray
The crown interprets this behaviour as a calculated softening up of Jane, a prelude to seduction
The mother caught him in flagrante delicto
You had your way with her

He tried to French kiss her

A form of bondage

Bondage

Give me a blow job

A blow job...I finally gave into that

Jack me

He tried to get into her pants

They groped

We necked a bit

Necking

He was feeling her breasts

Feeling the breasts

Felt her thighs

First bout of intercourse

The second bout (of intercourse)

Two bouts of intercourse

Vigorous intercourse

The episodes always ended with coitus interruptus

Simulating that act (i.e., having sexual intercourse)

Incidents of simulated intercourse

Simulated intercourse with her

Oral sex

The oral sex

Did have oral sex

He engaged in cunnilingus

He performed acts of cunnilingus on her

Acts of cunnilingus performed on her by the accused

Continued to assault...sexually by...cunnilingus

Performing cunnilingus on...her

Performing cunnilingus on each of the complainants

Asked me to go down on him

Fellatio

Act of fellatio

Perform...fellatio

He engaged in fellatio
Encouraged her to commit an act of fellatio
She was induced to perform fellatio on him

Sexual advances
His sexual advances
What could be described as sexual advances on complainant

Having sex
He had sex with me
To having sex [on several nights]
He wanted more sex
He then...said..."you can go to sleep"..."If you'll agree that we'll have sex again in the morning"

The sexual activity
Ongoing sexual activity
Her evidence of the sexual activity with her brother is true
He carried on sexual activities with both of them
(The accused) denies any any sexual activity took place
When he became involved in sexual activity with the complainant
Attempted to have some form of sexual activity with her
Sexual encounter
Sexual encounters
The initial sexual encounter on the couch

Have sexual connection [with the wife]

He had sex relations with her
Alleged sexual relations
Of sexual relations
Have sexual relations

It had sexual overtones
There was a sexual overtone or element
The degree of sexual involvement

Language that is vague and minimizes the assaultive nature of the act

He seemed not to be able to leave them alone
He had just misplaced his hand
He would bother them by grabbing them on the bottom and on the crotch area
In some respects it was more bothersome than it was serious
His hands became a little freer
His hands became freer
The way in which he has reacted to relieve his own tensions on three occasions
Their clothes came off
The first rape of a young girl was accidental
Inserted his fingers
Placed his fingers in her vagina

Inspect her breasts
Did inspect her breasts
Inspection of her breasts with a magnifying glass
The breast examination

That he did wrestle with her a few times
There was horseplay going on
The wrestling and horseplay of this kind was going on with her

Language Neutral to Assault (Physical Descriptions of the Act)

Standing slightly behind [the complainant] with his right arm around her neck and
 extended under her gown

The hand of the accused which was free did no more than move a very short distance
 towards her

Moving his hand towards the body of the complainant
Reaching for her genitalia

His left arm was also under her gown
His hands were over the breast area
She woke up to find the accused's hand underneath her panties
Placed his hand in the area of her vagina which was then covered by clothing
Placed his hand inside the front of the trunks she was wearing
Put his hand in the area of her vagina
Had his hands on her shirt
They were laying on the bed with his hands up her shirt

He held her in the chest area

He started feeling her body in a strange way and inappropriate places

He was feeling her personal areas with his hands

Then tried to put his tongue in my mouth

Putting his tongue in her mouth

He squeezed her breasts

Pinched her nipples

Squeezed her below the navel

Continued to assault her...sexually by digital penetration

Inserted a finger into her vagina

Placed his finger in her vaging [sic] in a nonmedical fashion

The accused rubbing...her body

The accused would rub her body

Rubbing the area around the opening of the vagina

Rub his penis

She was made to touch

Kept rubbing it (his penis)

The defendant...made her rub his penis with it by grabbing her wrist

Rubbed his penis on top of her stomach

Number of rubbing movements

Perform...masturbation upon him

Masturbating against her

The accused masturbated

He may have masturbated

Was then masturbating

Act of masturbation

Merely masturbating

Calling attention to the fact that one is masturbating

Masturbating in front of the complainant

Masturbated in front of her

She masturbated him to ejaculate

The defendant also told her to sit on his penis

Having the child sit on his penis

Holding a young girl on his lap with their respective genitalia in close proximity

The accused...positioned himself over her

He began to lower himself toward her and she started to cry

On top of her

He got on top of her

Got on top of her

Laying on top of her
Laid on top of her
Then he laid on top of me
Was already on top of her
He was on top of her for some five to ten minutes

On occasion he ejaculated
He ejaculated on a towel
Once to ejaculation

Removed her rings and some of her clothing
He removed her clothing
He removed her tampon
Father had removed the bottom portion of her pyjamas
Still sitting on her legs the accused then undid the complainant's pants
He then proceeded to unzip her jeans
You took her underwear and pants down
You had to take her underwear down
You had to take her pants down
Reached with his hand under T's shirt and undid her brassiere clasp at her back
Removed some of the victim's clothing
You then removed the victim's undergarments to bind them and tie them
The accused removed the complainant's bedcovers, jogging pants, and underpants
He...pulled her underpants down
You removed...her bed clothing
He began to touch underneath her underpants and pulled them off
He...pulled her nightie up
He unzipped her jacket
Her gown was undone at the top
Taking off her clothes
Took her clothes off completely
He endeavored unsuccessfully to unfasten the upper underclothing of the victim

He took off my clothes
My father took my shorts off

He took off all his clothes and laid on top of me

Took off his clothes and her pants

Attempts were made to cause it to be erected
Calling the attention of the children to his erect penis

You didn't achieve an erection
Unable to achieve an erection

The defendant produced his penis from his jeans

The accused's penis came to be exposed

Expose his penis

His penis was exposed

Began separating her legs

He spread her legs

That he had tied them

Trying to tie them

Of tying up on the hunting trip

Used a tensor bandage to tie up either of these girls

He tried to tie her spread-eagled to the bed

Tied her to the bed spread-eagle, arms and legs spread apart and on this occasion she stated he had injected a needle into her above the vagina

Tied her hands, took off her clothes, put her on the floor, put a gag in her mouth which she describes as a hanky

Tied me to the bed

He had tied her to the bed

He tried to tie her down to the bed

Being tied up at the camp

About being tied up then

Were you tied up for

Tying her up on this hunting trip

He tried to tie her up spread-eagled to the bed

Her father then took off her underpants, tied her hands and legs spread apart to the trees

Then he took off his own pants

He did remove a portion of his clothes

Partially removing his clothes

You removed your pants

Dropped his pants

Pulled his trousers down

Undo my zipper

He unzipped his clothes

He unzipped it real fast

The accused rolled her so she was lying on her back

He pulled her down beside him

He put her on the bed

The accused laid the girl on the ground on a coat or jacket and with her clothes off and with his clothes off

Fetishistic behaviour

The wearing of diapers and rubber pants

Public kneeling incidents

Language Appropriate to Assault

Language that reflects violent nature of sexual assault

Acts of criminal violence

In a somewhat violent fashion forced her down upon this mattress

His actions were very violent

Regrettable and violent

The more violent situations involving the type of conduct that this court has to deal with here

The sexual assault itself is physical violence

Any sexual assault of this sort is a brutal one

Brutally

Raped

Rape

He did rape

Attempt to rape

Attempted rape

Analagous to attempted rape

Rape a slightly built twenty-six year old woman

In other words you raped her

Those rapes

The last two rapes of which he has been convicted

First incident of rape

Last two rapes

The rape of a 9 year old and a 26 year old

Committed the rape of a 9 year old girl

Recent rape

To have been raped

The last rape committed

The conduct amounts to rape

Language that reflects the harm done to the victim

He was violating her

You then violated her vagina with your fingers and other blunt objects

The accused violated the complainant

Acts of degradation

Acts of humiliation

Humiliating

A demeaning act

Exploitation of naive and malleable young human beings

The nature of the indignities suffered by victims

They were very insulting

The ordeals suffered by the victims

He saw fit to terrorize three different women

Language that reflects use of force

His actions show...a desire to force himself upon this woman

Forcible attempt to take advantage of her sexually

Forcibly removed her trousers

Forced her to grasp and squeeze his penis

Cause her to submit

She did not submit to him on the couch but did in the bedroom

Since the attack

After the attack

The man who attacked the complainant

An attack on a woman

This sort of attack

He then attacked her

The attack

I view this as despicable any man attacking a woman under any circumstances

Grabbed her by the breast

The accused grabbed her and threw her down in the small room

He tried to hold me

Bound her with that clothing

Shoved needles up my bum

Shoved a needle up her bum

Acts of abuse

Sexual abuse

The nature of the abuse

Any abuse of them, even minor as it was in this case cannot be tolerated

Continued abuse

The offender started abusing the complainant

They had been sexually abused
The girls were sexually abused

Language that reflects unacceptable or immoral behaviour of accused

Your sordid conduct
Acted in an outrageous manner
The offender's actions...was loathesome and despicable and must be strongly condemned
His actions were very... offensive
His actions were...very outrageous
Behaviour of the accused...is disgusting and repulsive
The accused's conduct was cruel and disgusting in the extreme
Conduct of the Accused...is a very marked departure from decent conduct
Depredations
Such a heinous crime
Such deviant behaviour
Learn to control his deviant behaviour
His sexual deviation is many sided...includes fetishistic behaviour which involves children
 of both sexes in different forms of sexual behaviour
The perversion
Criminal aspect of his deviant sexual orientation

This sort of action is not acceptable
Wrongful acts
Acts of depravity

Molested her daughter
The man who molested her

Attempted buggery
Acts of attempted buggery

There was a stalking of this woman that took place

Language taken from the Criminal Code

Quotes from the Criminal Code

The accused had invited, counselled or incited a person under the age of fourteen to do one of the prohibited acts for a sexual purpose

Sexual intercourse with a female person not his wife and under the age of 14

Having sexual intercourse with the complainant, a female person, not his wife under the age of 14 years

Sexual intercourse (with the complainant), a female person, not his wife and under the age of fourteen years...

Invite, counsel or incite a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object

A clear violation of each complainant's sexual integrity

Incest

Having anal intercourse

The anal intercourse

Through the exercise of authority he caused them to commit these acts of a sexual nature

Use of "Sexual Assault"

Aggravated sexual assault

Aggravated assault

Charge of sexual assault

Charges sexual assault

Sexual assaults

A sexual assault

The sexual assault

These sexual assaults

Sexual assault with a weapon

Sexual assault causing bodily harm

Sexual assault by touching

Sexually assaulted

Sexual assaulting

Sexually assaulting them

Any sexual assault of this sort

Continuing series of sexual assaults

Further sexual assault

The sexual assault of

Of what we would all view as a sexual assault

A sexual assault upon the complainant

The accused has shown a propensity to sexually assault children

Commit a sexual assault on

Commit the sexual assault
Committing a sexual assault
Committed a sexual assault upon the person of
Did commit a sexual assault
Did commit sexual assault of another person

Count of sexual assault
One count of sexual assault
Two counts of sexual assault
Three counts of sexual assault
A charge of sexual assault
The charge of sexual assault
An offence of sexual assault

Nature of the sexual assault
A serious sexual assault

Sexual assault on herself
The complainant was wounded by her attacker during the sexual assault
The sexual assault on the complainant
The sexual assault on her
His sexual assault on [the complainant]
She was being sexually assaulted by the accused
Commit a sexual assault upon [complainant]
Committing a sexual assault (on the complainant)
He committed sexual assault upon her
Continued to assault her physically and sexually
The sexual assault upon them
The person who committed the sexual assault upon the complainant
He sexually assaulted the complainant
He committed a sexual assault
[I am unable to conclude his was the worst possible type of] attempted sexual assault

Denies he ever had sexually assaulted
He denies that there was misconduct in the way of sexual assault

Language that depicts the sexual assault as a crime

The crime

The crimes alleged

Sexual crime

Your crime

This type of crime

Those two crimes

Such a crime

Past sexual crimes

This criminal act

He was committing a criminal act

Criminal acts

Victims of his criminal conduct

A particularly opprobrious crime

Pedeophiliac crime

Continuous illegal contact of a so parentis to them

Use of "Sexual offence"

Sexual offence

Sexual offences

Five sexual offences

This is the first sexual offence

Commission of a sexual offence

References to the nature of contact or the part of the body touched

Touching

Touching and that sort of thing

The touching

Two touchings

Sexual touching

Touching of her body

She was touched

Touch the girl

The touching of her body

The touching of her breasts and vagina

The conduct of touching

The incidents of touching
In the nature of improper touching
The touching for a sexual purpose which took place between (the accused and the complainant)
Sexual touching of the girl in her private parts
Touched in this fashion

He touched me with his hands on my body
Touched me all over with his hands
He touched her with his hands
Touching her with his hand all over
Touching her with his hand all over her body
Her body was touched all over

Pulled her hand up to touch his penis
Touched his penis
Touching of the offender's penis by the child
Touch the accused's penis

The accused tried to touch her breasts
Touched her breasts
Touching her breasts
Touching her on her breast
Touching (the complainant's) breasts
Touching the girl's breasts in a sexual manner
Touched her on the breasts
Touched her breasts under her blouse
He touched her breasts...with his hands and penis

Touched her legs and thighs
Touching on the private parts outside their clothing
He...started to touch her under her underpants
He began to touch underneath her underpants

He touched me where I pee
He touched her where she peed
Touched her between her legs with his finger
To touch her genitalia
Vaginal touching
He touched her vagina with his hands and penis
Took every opportunity to touch her in the crotch area

Language that reflects legal issues of force and no consent

Forced sexual intercourse

Forced...intercourse

He forced her to engage in sexual intercourse

Having sexual intercourse with a woman who did not consent

Not consensual intercourse

Not consensual bondage

Not a consensual act of sexual intercourse

Sexual intercourse with her against her will

Sexual intercourse with her without her consent

She had to engage in this sexual act

The complainant did not consent to the intercourse

The accused had sexual intercourse with her without her consent

There was no consent to the sexual intercourse

Twice having intercourse without her consent

Violent sexual act performed upon her against her will

Were required to perform the sexual act

Language that reflects use of force

His actions show...a desire to force himself upon this woman

Forcible attempt to take advantage of her sexually

Forcibly removed her trousers

Forced her to grasp and squeeze his penis

Cause her to submit

She did not submit to him on the couch but did in the bedroom

Since the attack

After the attack

The man who attacked the complainant

An attack on a woman

This sort of attack

He then attacked her

The attack

I view this as despicable any man attacking a woman under any circumstances

Grabbed her by the breast

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He tried to hold me

Bound her with that clothing

Shoved needles up my bum
Shoved a needle up her bum

Acts of abuse

Sexual abuse

The nature of the abuse

Any abuse of them, even minor as it was in this case cannot be tolerated

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Depredations

Such a heinous crime

Such deviant behaviour

Learn to control his deviant behaviour

His sexual deviation is many sided...includes fetishistic behaviour which involves children
of both sexes in different forms of sexual behaviour

The perversion

Criminal aspect of his deviant sexual orientation

This sort of action is not acceptable

Wrongful acts

Acts of depravity

Molested her daughter

The man who molested her

Attempted buggery

Acts of attempted buggery

There was a stalking of this woman that took place

Defining the act in terms of the nature of the contact

Conduct of a sexual nature

One incident...of a sexual nature

Performing acts of a sexual nature

Acts of a sexual nature

A very minor sexual nature

Touching of this nature

Matters of a sexual nature

The events between the complainant and himself of a sexual nature

Assaults...were sexual in nature

A struggle of a sexual nature

Had a clear sexual aspect that showed a degree of persistence on his part

Use of "Indecent Assault"

Indecent assault

Indecently assault

Did indecently assault

Indecently assaulted

One of indecent assault

A serious indecent assault

Indecently assault

This offence of indecent assault

Five counts of indecent assault

The charge of indecent assault

The indecent assaults

She was indecently assaulted

Use of "Assault"

Assault

Assaults upon [mentally handicapped girls]

During the assault

Leading up to the assault

Related to the assault

Not a factor to the assault

Assault allegations

A serious assault

The assault

Assaulted [while she sleep]

Assaulted her

Alleged assault

Assaults

This assault

These assaults

The assaults

Series of assaults

The assaults alleged in count

The alleged assaults

Minor assaults

The grasping of the child's hand constitutes an assault

An assault made for the purpose of sexual gratification

The assaults on the step-children

This was an assault to a woman sleeping in her own bedroom

The assault upon her

He had assaulted her

His assault upon them

You assaulted her

Grievously assaulted a fourteen year-old girl or child

Use of "Gross indecency"

Gross indecency

Act of gross indecency

Acts of gross indecency

An act of gross indecency

An act of gross indecency upon her

An act of gross indecency with the complainant

Commit an act of gross indecency

Commit an act of gross indecency upon the person

Committing an act of gross indecency

Committing acts of gross indecency

Committed various acts of gross indecency

Did commit an act of gross indecency

Did commit an act of gross indecency with another person

To commit gross indecency with a 10 year old girl

Indecency

Use of "Act"ActActsAn actAn act perpetuatedHis actsThe actThe act of sneaking into a sleeping woman's bedThe actsThe number of actsThese actsThose actsAlleged actsParticular actsGuilty actIllicit actsYour actActs of this natureActs of the accusedA familiar act to these partiesThe act nevertheless was seriousThe acts that she complains ofActs against a daughterSexual assault as an offenceOffenceAn offenceEach offenceEach of the separate offencesFor this offence aloneThe offenceOffencesThe offencesAll offencesRemaining offencesOffences described in counts 1 through 3Offences of this kindOffences of this sortOffence of this natureOffence of sexual assaultThe first offence

The second offence
The type of offence
The first six offences
The later offence
The other offences
The offences past and present
The offences that were committed
The offences in respect of the daughter
This offence
This offence alone
This present offence
This sort of offence
This type of offence
That offence
These types of offences
Those types of offences
Those offences
Those three offences
Two separate offences
Alleged offences
Recent offences
Same offences
Second offence
Second of the offences
Serious offence
Separate offences
Two offences
Three offences
Three similar offences
Actual offences
Several offences

Your offence
His offence
His offences
His previous offences
Four of his offence
There is independent evidence of his offending against them

The violence that is always a part of this sort of offence
Serious personal injury offence
Serious personal injury offences
It is a very serious offence
A very serious offence
The sort of offence we have here

The commission of the four offences

The offences for which he must now be sentenced

Each of these offences

For those offences

The time of the offence

Circumstances of that offence

Circumstances of the offences

The offending

Miscellaneous

Sexual intercourse charges

APPENDIX D: SUMMARY OF VIOLENCE ANALYSIS

Judgement (as in Appendix A)		Charge (as in Appendix A)	Outcome (as in Appendix A)	"Violence" mentioned re sexual assault	Sexual assault described as violent vs. not violent
BCJ	835.92	ITSP (<14)	POL	-	
BCJ	937.92	SA	A	-	
BCJ	881.91	SACH	G(P)(SA)	X	Violent
BCJ	922.91	SA	A	-	
BCJ	980.91	SA (<14) SA (14<16)	A	-	
BCJ	2054.91	SA	G(F)	X	Violent
BCJ	2941.91	SA (<14)	G(F) (DO)	-	
BCJ	3602.91			-	
BCJ	3775.91	SA	A	X	Violent
BCJ	3783.91	SA, AI	G(F)	-	
BCJ	433.90	AGSA	G(F)	-	
BCJ	1008.90	SA	A	X	Violent
BCJ	1456.90	SA, IA (13-15)	G(P)	X	Violent
BCJ	414.89	IA, SA (<14)	G(P)	-	
BCJ	155.89	SA	G(P)	-	
BCJ	1774.89	SA (<14)	A	-	
BCJ	1247.88	SA	G(P)	-	
BCJ	1259.88	SA, GI (<14)	G(F)	X	Violent

Judgement (as in Appendix A)	Charge (as in Appendix A)	Outcome (as in Appendix A)	"Violence" mentioned re sexual assault	Sexual assault described as violent vs. not violent
BCJ 1264.88	IA, SA, INCES, SI<14	G(F), G(F), A, A	-	
BCJ 1299.88	SA	G(F)	X	Violent
BCJ 1676.88	SA	?	-	
BCJ 2178.88	SAWW	A	-	
BCJ 2184.88	SA (<14)	G(P) (DO)	-	
BCJ 2186.88	SA	G(F)	X	Not violent ¹
BCJ 2340.88	SA	G(P)	- ²	
BCJ 2386.88	SA	G(F)	-	
BCJ 2392.88	SA	G(P)	X	Violent
BCJ 2405.88	SA, SAWW	G(P)	-	
BCJ 2497.88	SA	G(P)	-	
BCJ 121.87	SA	A	X	Not violent ³
BCJ 345.87	IA, SA, GI, SI<14	A	-	
BCJ 418.87	SI<14, SA	G(F), A	X	Violent/ Not violent ⁴
BCJ 424.87	SA (<14) (<16)	G(P)	X	Violent ⁵
BCJ 872.87	SI<14, SA, GI	G(F)	-	
BCJ 922.87	IA, SA (<14)	G(P)	X	Not violent ⁶
BCJ 925.87	GI (<14)	A	-	

Judgement (as in Appendix A)	Charge (as in Appendix A)	Outcome (as in Appendix A)	"Violence" mentioned re sexual assault	Sexual assault described as violent vs. not violent
BCJ 1220.87	SA	G(F)	-	
BCJ 1246.87	SA (<14)	G(F)	-	
BCJ 1258.87	SA	G(F)	-	
BCJ 1313.87	SI14<16, SA	G(F)	-	
BCJ 1983.87	SA	G(F)	X	Violent
BCJ 1996.87	SA	G(F)	-	
BCJ 2006.87	ASA	G(F)	-	
BCJ 2008.87	SA, GI, IA	G(F?)	-	
BCJ 2131.87	SA	G(F)	-	
BCJ 2184.87	SA	G(F)	-	
BCJ 2192.87	SA (<14)	G(P) (DO)	-	
BCJ 2562.87	IA, SA (<14)	G(F)	-	
BCJ 2563.87	SA	G(F)	X	Violent
BCJ 2564.87	SA	G(F)	-	
BCJ 2585.87	SA (<14)	G(P)	X	Not violent
BCJ 2731.87	SA	A	-	
BCJ 2753.87	GI (<14)	G(P)	X	Not violent
BCJ 2746.87	SA	G(F)	-	
BCJ 2806.87	SA	G(P)	-	
BCJ 2823.87	SA, SA	A, G(F)	-	
BCJ 2839.87	SI<14, SA	A, G(F)	X	Not violent
BCJ 2934.87	SA	G(F)	-	

Judgement (as in Appendix A)	Charge (as in Appendix A)	Outcome (as in Appendix A)	"Violence" mentioned re sexual assault	Sexual assault described as violent vs. not violent
BCJ 2940.87	SA, SI14<16, GI	G(F)	-	
BCJ 2941.87	SA (<14)	G(F)	X	Violent ⁷
BCJ 2991.87	SA	G(F)	-	
BCJ 2996.87	SA	G(F?)	-	
BCJ 3001.87	SA (<14)	G(P)	-	
BCJ 3015.87	SA	G(?)	-	
BCJ 3024.87	SA	G(F)	-	
BCJ 1012.86	IA (<14)	G(P)	X	Not violent
BCJ 2534.86	SA	G(P)	-	
BCJ 2545.86	GI, IA, AB, SA	G(F)	-	
BCJ 2642.86	IA, R, SI<14, GI IA, R, SI<14, GI	G(F), G(F), -, G(F) G(F), A, A, G(F)	-	
BCJ 2677.86	SA	G(F)	X	Not violent
BCJ 2754.86	SA	G(P)	X	Violent
BCJ 2788.86	SA, GI	G(F)	-	
BCJ 2801.86	SA	G(P)	X	Not violent
BCJ 2842.86	SA	G(F)	X	Not violent
BCJ 2910.86	SA (15)	G(F)	-	
BCJ 2913.86	SA (<14)	G(P)	-	
BCJ 2916.86	SA (<14)	G(P)	X	Not violent

1. "There is no evidence of violence apart from the holding of the hands or wrists."

2. Although there is no occurrence of "viol" the word pattern "brutal" occurs in this case in the following context:
 "you robbed and terrorized the victim and either raped or brutally sexually assaulted her."
 "Brutal" occurred in four other cases, but this is the only one in which it occurs but "viol" does not.
3. "[The actions] were not of a violent kind but were a clear violation of each complainant's sexual integrity."
4. "There is nothing in the record that indicates any violence in the offence itself, other than the necessary violence that is apart of this offence, where the conduct amounts to rape ... there was no violence of the sort that often accompanies these acts"
5. "There was a degree of violence involved in the first offence [but not in the second]"
6. "not because of the violence to the children, because there wasn't any physical violence to the children but because of the degradation he submitted them to."
7. "There was no evidence of violence, but such assaults committed by a person having authority over the victim, as Mr. C. did, are in themselves a form of violence."

APPENDIX E: BRIEF REPORT FOR CROWN COUNSEL LANGUAGE IN SEXUAL ASSAULT JUDGEMENTS¹

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It is important for Crown counsel to be aware that the language used to describe sexual assault can depict the event in a way that undermines their arguments in court. The language used to refer to these acts can have a profound impact on how they come to be understood. Words and phrases are not just impartial labels: To select a particular term is to accept the host of connotations associated with that term. Consider the following excerpt from a sexual assault trial (which ended in acquittal):

Accused: I just rolled over and tried to make love to the wrong girl

Crown: Okay. Did you check? Did you look around?

Accused: No

Crown: Okay. Now, the woman that you **made love** to the second time around

Notice that, as is often done, Crown counsel incorporated a term introduced by the accused and also described the alleged assault as "making love". In this case, the adopted term has strong connotations of affection and consent, which Crown appears to be accepting and even reinforcing. In some circumstances, Crown might wish to ask instead, "Now, the woman that you **penetrated** the second time around ...", which would depict the act in terms of the physical actions of the accused without any implication of affection or consent.

When Bill C-127 replaced the old rape laws in 1983, one aim was to reflect the modern view of sexual assault as a violent act of assault rather than a sexual or moral offense. Sexual assault is the action of one person against another rather than two individuals participating in a mutually shared activity. In this report, we will use examples of the language found in sexual assault judgements to illustrate the power of language to create different versions of an event. In particular, we will focus on how the language found in sexual assault judgements can characterize the acts either as sex or as assault.

Method

We used Quick-Law as an economical method for studying language use in the largest possible number of cases. We want to emphasize our assumption that the language found in these judgements reflects the language used by all the parties involved and not just the views of individual judges. That is, judgements are summaries of the testimony and of questioning by counsel as well as the judge's decision. Thus, the examples used in this report are examples of the language used by the accused, complainants, Crown counsel, defense counsel, and judges. The database consisted of all of the 76 B.C. judgements listed in Quick-Law from 1986 to early 1993 that included a description of the facts of the case and involved a female complainant. The charges included sexual assault as well as sexual offences (for example, sexual touching, sexual intercourse with a female under the age of 14, indecent assault). There were 12 acquittals and 65 cases where the accused was found guilty or pleaded guilty. All judgements were read by two or more independent analysts who identified all instances of language used to describe the act.

¹ Summary of a project funded by the B.C. Ministry of Women's Equality, January-June 1993. Dr. Bavelas is a Professor in the Department of Psychology, where Dr. Chovil is a Research Associate and Ms. Coates is a doctoral student.

Is Sexual Assault Violent?

Obviously, one of the most appropriate characterizations of sexual assault would be as **violent**, so we paid particular attention to this term. Surprisingly, the term only appeared in one-third of the cases. In these cases, even when the act had been legally established as an assault, half were described as violent and **half were described as not violent**. Apparently, sexual assault is a kind of assault that can be described as non-violent. Our inference is that the term "violence" is frequently reserved for force that is used to accomplish the assault rather than the assault itself. Although sexual assaults that involve additional violence are appropriately regarded as more serious offences, the violent nature of sexual assault itself should also be acknowledged. We suggest that additional violent actions should be referred to as **instrumental** or **additional** acts of violence, that is, instrumental or additional to the violence of the assault itself. This would enable the courts to recognize sexual assault as inherently violent while still taking into consideration the use of additional violence to gain access to the complainant's body.

The anomaly of "non-violent sexual assault" led us to examine in more detail the vocabulary with which the sexual assault itself was described. We identified inappropriate, neutral, and appropriate terms for sexual assaults. **Inappropriate**, in this context, refers to language that is **inconsistent with Crown counsel's position that the accused should be found guilty**; that is, it portrays the accused's act as non-criminal behaviour. **Neutral** language does not imply guilt or innocence of the accused. **Appropriate** language depicts the accused's act as assault, which is the Crown's position. We maintain that, just as consensual sexual activity should not be characterized as an act of brutal penetration, sexual assault should not be described as "fondling" or "making love". Inappropriate language in the prosecution of the offence both invalidates the experience of the complainant and raises questions as to whether justice is served.

Inappropriate Language

Our everyday vocabulary consists mostly of terms that do not capture the violent, non-consensual nature of sexual assault. There are many ways to talk about consensual sexual activity but few alternatives for talking about sexual assault. As a result, the language used in sexual assault cases often incorporates familiar but inappropriate terms from everyday language. So, for example, we found language in the judgements that depicted the act in **affectionate** terms--which is clearly inconsistent with Crown counsel's position. Examples are terms such as "fondling", "kissing", and "caressing", which are all defined as acts of affection and fondness (Shorter Oxford English Dictionary). Clearly, words that connote love and caring misrepresent the true nature of sexual assault. To depict sexual assault in these terms implicitly defines the act in question as something other than assault.

Other descriptions depicted the event as **intimate sexual activity**. Terms such as "seduction", "French kiss", or "blow job" were obvious examples of erotic language that defined the acts in sexually stimulating terms. It might initially appear that more formal terms such as "intercourse", "cunnilingus", or "fellatio" are neutral rather than erotic. However, in everyday usage as well as their dictionary definitions, these terms would always describe sexual acts rather

than acts of violence. Hence, the connotations they bring are sexual, and the context they evoke is a sexual one; they would not make a hearer think of violence.

Other usages were even more subtle in the way they implied a **mutual** activity. For example, "they had intercourse" or "she fellated him" imply that both parties were willing participants in a sexual activity. Using terms or phrasings that imply consensual sexual activity to describe sexual assault can only obscure important differences between these two events.

A significant subset of the inappropriate terms were depictions that **minimized the assaultive nature** of the act. For example, describing the rape of a young girl as "accidental" not only minimized the event but implied that the accused was not responsible for the act. Describing repeated sexual touching of the bodies of the accused's stepdaughters as "more bothersome than serious" suggests that these acts were no more than mere annoyances. In our view, such language invalidates the complainant's experience and would weaken any arguments made by Crown counsel.

Many judgements also contained **oxymorons**, that is, phrasings that were inherently contradictory. For example, the victim was depicted as consenting even though it was clear that the accused used instrumental force: "Prior to the consent to the sexual intercourse, the accused, on his own admission, slapped the complainant across the face". Other descriptions acknowledged the use of force but still described the act as sexual; for example, "forced her to fellate him".

Neutral (Physical) Language

Neutral language provides only a **physical description** of the events that took place and is as close as one can come to an "unbiased" description, without evaluation and without connoting either sex or violence. For example, "he began to lower himself" described the accused's movements towards the complainant and "she began to cry" described the complainant's behaviour. Terms such as "insert" or "penetrate" described the placement of fingers or the penis into the vagina. These are useful alternatives for portraying acts that are often described in what we have classified as inappropriate ways (i.e., as using affectionate, erotic, or sexual terms). Consider, for example, the difference between "He tried to French kiss her" and "He put his tongue in her mouth".

Appropriate Language

Language that is consistent with Crown counsel's position would convey the elements of sexual assault (or other sexual offences). For example, in a number of judgements, the language depicted the **violent** nature of the acts. These included the use of the terms "violent" or "brutal" or descriptions of the act as physical violence or rape. Acts were also depicted in a way that made explicit the use of instrumental force, either by words such as "forced" or "attacked" or by phrases that implied force, such as "caused her to submit" or "bound her with clothing".

Also within the appropriate category are descriptions of the accused's actions that explicitly acknowledged the **harm done to the victim**. Phrases such as "violated her vagina" or "ordeals suffered by the victim" portrayed the event in terms of the impact the assault had on the victim.

Other terms focused on the **unacceptable nature** of the accused's acts, that is, as behaviour not tolerated in our society. These included descriptions of the actions as "loathsome and despicable" or as acts of "depravity".

In the Table below, several of the most common acts of sexual assault are described using inappropriate, neutral, and appropriate terms for the same act. The purpose is both to illustrate the differences and to offer concrete examples that may assist Crown counsel in prosecuting cases. For a more complete listing of the entire vocabulary used to describe sexual assaults in the 76 judgements we examined, the reader is referred to the full report (available from the Ministry of the Attorney General library, the Ministry of Women's Equality, or the first author).

Alternative Vocabularies for Acts of Sexual Assault

Inappropriate (for assault)	Neutral (physical) description*	Appropriate (for assault)*
fondle, caress	touch, rub	molest, abuse
making love, intercourse	penetration, inserted his penis	rape, assault, forced penetration
kiss, necking	oral contact, put his mouth on hers	unwanted (forced) oral contact
French kiss	put his tongue in her mouth	pushed his tongue into her mouth
oral sex	oral-genital contact	unwanted (forced) oral-genital contact
fellatio	inserted his penis into her mouth	forced his penis into her mouth
cunnilingus	put his mouth on her genitals	was subjected to his mouth on her genitals
seduction	actions leading to, planned acts	luring, manipulating, deceiving

*For some acts we were unable to find neutral or appropriate alternatives in the judgements themselves and had to suggest our own examples for these columns.

Conclusions

Participants in the legal process are already aware of the general importance of language. We hope that Crown Counsel will become even more sensitive to the language used in describing sexual assaults, both in their interactions with the complainant and in presenting their arguments during the trial. Using the 76 judgements in Quick-Law, we identified three kinds of language for describing sexual assault: Language that is **inappropriate**, from the Crown's and complainant's point of view, depicts the acts in everyday, non-criminal terms--for example, as erotic, affectionate, or mutual. **Neutral** language is limited to a physical description of the acts, without connotations either of consent or of force. **Appropriate** language (again, from the Crown's point of view) emphasizes violence, force, and harm to the victim. It should be obvious that we are not concerned with so-called "politically correct" language but rather with language that is consistent with both the law and dictionary definitions. We hope that Crown counsel will help educate others about more accurate and precise ways to describe (and avoid describing) sexual assault.