

**An Exploration of Judicial Discourse in Ontario Domestic Violence and
Sexual Assault Cases**

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May 20, 2014

INTRODUCTION	3
PART ONE: DOMESTIC VIOLENCE	4
PART TWO: SEXUAL ASSAULT	12
CONCLUSION	17
TABLES	18
TABLE 1: DOMESTIC VIOLENCE CASES	18
TABLE 2: SEXUAL ASSAULT CASES	22

Introduction

Violence against women, both physical and sexual, is an institutional problem embedded in the structure of our society. Feminist criminologists have struggled with understanding both the pervasiveness of this social phenomenon, and how to prevent it from occurring. In North American society, women share a common awareness of their vulnerability to victimization.¹ Even with the progress of the feminist movement, and the substantial amount of power women have gained in society, they are still considered second class citizens in many respects, most notably as victims of gendered violence.

For example, when examining domestic violence, the statistics are staggering. According to a countrywide study on violence against women in the United States, violence is the leading cause of injury to all women in the country.² According to the Canadian Domestic Violence Death Review Committee, between 2002 and 2007, 94% of domestic violence homicide victims in Ontario were women.³ When examining the 1993 Violence Against Women Survey, approximately 51% of Canadian women experienced at least one incident of physical or sexual assault since the age of 16.⁴ As DeKeseredy⁵ notes, “it often hurts to be a women in Canada”. Thirty years ago, violence against women was a private issue, and was hardly considered a problem, let alone a social issue embedded in the structure of society. Today, cultural norms perpetuate models of gender and sexuality where men’s violence and women’s fear of victimization are normative. We live in a culture, where gendered violence, including battering and rape are sadly familiar experiences for many women.

Formal social control mechanisms, such as the criminal justice system play a pivotal role in addressing domestic violence and sexual violence, and providing protection to victims. However, formal social control agencies such as the criminal justice system are often criticized for failing to provide adequate protection and services to crime victims. Victims often face extensive barriers when seeking help from the courts. Resources are not always readily available to all victims of violence whether due to inaccessibility or unavailability. Additionally, victims do not always feel comfortable reporting the details of a traumatic event such as domestic or sexual violence. Gartner and Macmillan emphasize the dark figure of crime, where all types of violence against women are underreported in general, but that domestic violence is the least likely to be reported to the police.⁶

The goal of this research is to demonstrate how Ontario courts respond to and address criminal charges of domestic and sexual violence.

¹ Elizabeth Comack, “The Nature and Extent of Women’s Involvement in Crime” in Gillian Balfour & Elizabeth Comack, eds, *Criminalizing Women* (Halifax: Fernwood Publishing Company Ltd) 58 [Comack].

² Roslyn Muraskin, “Sexual Harassment and the Law: Violence against Women” in Roslyn Muraskin, ed, *Women and Justice: It’s a Crime* (New Jersey: Pearson Education Inc) 302-311).

³ Walter DeKeseredy, *Violence Against Women: Myths, Facts and Controversies* (Toronto: University of Toronto Press, 2011) [DeKeseredy].

⁴ Holly Johnson and Vincent Sacco, “Research Violence Against Women: Statistics” (1995), 37 CCJA 218.

⁵ *Supra* note 3.

⁶ Rosemary Gartner & Ross Macmillan, “The Effect of Victim-Offender Relationship on Reporting Crimes of Violence against Women” (2005) 37 Can J Criminal Crim at 393

PART ONE: DOMESTIC VIOLENCE

The General Social Survey defines domestic violence as violence perpetuated by a former or current spouse/ partner, including threats, and physical assaults (throwing objects, pushing, grabbing, shoving, slapping, kicking, hitting, biting, beating, choking, and being held at gunpoint and/or knifepoint). I have compiled 43 cases of domestic violence from the Superior Court of Ontario, Ontario Court of Justice, and a few Court of Appeal cases. The facts of these cases all pertain to male on female violence stemming from a current or former intimate relationship, and I have excluded all cases that resulted in a homicide charge.

First I will present general findings on these cases, including the general charges and subsequent sentences, age of defendants, relationship to defendants, while making reference to specific injuries that occurred. Next I will discuss aggravating factors that were noted in the court decisions. In both these sections I will address how patriarchal ideals of race and gender play into this discourse. Finally, I will discuss some of the problematic language used by judges in these cases that neutralize and rationalize domestic violence against women.

Charges

Across the 43 cases examined, the most common charges included assault (19), uttering threats (15), and assault with a weapon (17). It is important to note, that many of these cases involved multiple charges, such in *Galaprete* where the defendant threw a radio at a mirror, smashed a fan, punched the complainant in the head multiple times, and threatened to kill her and their son.⁷

Assault

In examining the charges for assault, the amount of violence in these cases ranged from minimal, such as in *Barilko*,⁸ where the defendant spat on the complainant, to potentially fatal. In *Getachew*, the defendant forced the complainant to ingest bleach, broke a cutting board over her head, and subsequently kicked her in the leg.⁹ In *West*, the defendant threw boiling water at his wife. A commonality among many of these cases is that when there was a child present, the incident occurred in his or her presence.¹⁰ In *Rashid*, the defendant first assaulted the complainant, and then their child to prevent him from calling the police for assistance.¹¹ In some cases, the physical assaults would occur in conjunction with sexual violence. In *S(D)* the defendant assaulted his wife and children over a ten year period, and would force the complainant to engage in sexual intercourse with his friend.¹²

Threats

The types of threats employed by defendants can be categorized into three categories: threats accompanying violence, threats to children, and threats of violence if the complainant took certain action. Threats of ensuing harm or death were common among these cases, and often occurred in conjunction with other charges such as assault. In *JE*, the defendant assaulted, and attempted to choke the complainant, and then uttered a death threat during a mediation session

⁷ *R v Galapate*, [2010] 538 ON CJ (available on WL Can), (Ont Ct J), Vallaincourt J [*Galaprate*].

⁸ *R v Barilko*, [2014] 1145 ON SC (available on CanLII), (Ont Sup Ct J), Hill J [*Barilko*].

⁹ *R v Getachew*, [2013] 3219 ON SC (available on WL Can), (Ont Sup Ct), Campbell J, [*Getachew*].

¹⁰ *R v West*, [2013] ON CJ 460 (available on CanLII), (Ont Ct J) Filippis J [*West*].

¹¹ *R v Rashid*, [2009], 9745 ON SC (available on CanLII), (Ont Sup Ct), Sosna J.

¹² *R v S(D)*, [2013], 244 ON CA (available on CanLII), (Ont CA), MacPherson J, Blair J & Juriansz J [*S(D)*].

with a third party present.¹³ In *Wardak*, the defendant punched the complainant in the head while constantly threatening to kill her.¹⁴ In *Harry*, the defendant whipped his partner with an electrical cord, and threatened to harm her children if she reported him.¹⁵ Threats were also utilized to prevent the complainant from engaging in certain actions, such as divorcing the defendant,¹⁶ gaining full custody of children,¹⁷ or seeking out police assistance.¹⁸

Assault with a Weapon

It was common among the cases for the defendant to assault the complainant with a weapon, resulting in maximum control, and more serious injury. In *Bryce*, the defendant held the complainant down with brass knuckles, and employed a switchblade.¹⁹ In *M.I.*, the defendant assaulted the complainant with a shovel cutting her cheek, and fracturing her tooth.²⁰ In *Khasria*, the defendant slashed his wife's neck with a knife.²¹ *S(D)* presented a highly volatile example of domestic assault, with the defendant employing swords, poles, an axe, and meat cleaver in victimizing his common law partner.²²

Age and Relationship to Complainants.

Age

The age of defendants ranged from age 17 to 59. The majority of defendants were in their mid-30's to early 50's. These results run contrary to much of the research on domestic violence, where women ages 18 to 24 are at the highest risk of being physically (and sexually) assaulted²³. This is generally due to a higher rate of interaction with you men who are the most likely age group to engage in crime²⁴. With the exception of a couple cases, such as *West*²⁵ where the incident occurred in a friend's home, the majority of assaults occurred in the context of the complainant or defendant's home.

Relationship to Complainants

The relationship of the defendants to their complainants can be divided into 4 classifications including, domestic partner (dating relationship), common law spouse (living together), married, and former partner. The majority of cases involved a married couple, common-law spouse, or former partner. Often in the case of a married couple, there were children who witnessed multiple incidents of violence against their mother.²⁶ Some of the cases involved young children that the female complainants felt responsible to protect. According to the GSS 2009, women who live with children under the age of 14 are quite protective of them, and often take various precautions such as staying with an abusive partner to ensure the safety of their family.

¹³ *R v JE* [2014], 860 ON SC (available on CanLII), (Ont Sup Ct), Conlan J [*JE*].

¹⁴ *R v Wardak*, [2011], 583 ON CJ (available on CanLII), (Ont Ct J), Wright J.

¹⁵ *R v Harry* [2009], 645 ON CJ (available on CanLII), (Ont Ct J), West J.

¹⁶ *R v Ibrahim* [2009], 517 ON CJ (available on CanLII), (Ont Ct J), Nicholas J.

¹⁷ *R v Zemarlayai*, [2011], 68 ON CJ (available on CanLII), (Ont Ct J), Sparrow J [*Zemarlayai*].

¹⁸ *R v C(G)*, [2010], 539 ON CA (available on WL Can), (Ont CA), MacFarland JA, Feldman JA, Karakatasanis JA.

¹⁹ *R v Bryce*, [2013], 2637 ON SC (available on CanLII), (Ont Sup Ct), Ricchetti J.

²⁰ *R v M.I.* [2010], 37 ON CJ (available on CanLII), (Ont Ct J), Nicholas J [M.I.]

²¹ *R v Khasria*, [2013], 5707 ON SC (available on CanLII), (Ont Sup Ct), Lenz [*Khasria*].

²² *S(D)*, *supra* note 12.

²³ *DeKeseredy*, *supra* note 3.

²⁴ *Ibid.*

²⁵ *West*, *supra* note 10.

²⁶ *R v James*, [2010], 3160 ON SC (available on CanLII), (Ont Sup Ct), Campbell J [*James*]; *R v Mitchell*, [2009], 66 ON CJ (available on CanLII), (Ont Ct J), Filippis J [*Mitchell*].

When violence occurs at the hands of a long-time partner, such as a husband, women may be less likely to report it due to the fact that it is being perpetuated by a loved one, and there are children involved.²⁷ Due to the often private nature of physical violence against women, complainants may be less likely to take self-protective measures such as leaving. In many of these cases, the complainant rationalized her partner's behaviour. In *Dubois*, the complainant consistently maintained her desire to reconcile with the defendant.²⁸ In *West*, the complaint took precautions to leave her abusive partner after she deemed it went too far, following the defendant throwing boiling water at her while she was holding their infant.²⁹

Criminal justice officials, shelter workers, and so on often contend that the most important weapon women have in an abusive relationship is to leave the perpetrator, or report the abuse. In *C(H)*, the defendant's counsel accused the complainant of fabricating her accusation because she had not previously reported the abuse to authorities.³⁰ Murray J held that the complainant was reluctant to take action due to her intimate feelings for the defendant. Furthermore, separation alone can prove more dangerous than staying with an abusive partner. Focusing on non-lethal separation assault, Statistics Canada's national Violence Against Women Survey found that a fifth of women who reported domestic violence, were abused at the hands of a former male partner, with the violence increasing in severity following the separation. The 2004 and 2009 GSS demonstrated that among women with a former abusive male partner just under half were further abused following separation. Furthermore, estrangement and common law status are associated with a higher risk of spouse killings of women.³¹ The scholars point out that women are at a much higher risk of victimization when they are leaving a relationship. Ultimately, it seems that separated and divorced women may be at a higher risk of being abused than married women.

How does race play in?

A few of the cases examined specifically referenced the defendant's race/ ethnicity in order to contextualize the violence employed. Research demonstrates that individuals of visible minority status often experience higher rates of violent victimization.³² Due to the intersection of their race/ethnicity, and gender, visible minority women are among those groups more likely to be victimized. GSS has consistently reported that Aboriginal women are 3 times more likely to be victims of domestic violence than their non-aboriginal counterparts, and aboriginal men are at a higher risk of engaging in such violence.

Often this use of violence stems back to the historical disadvantage experienced by many aboriginal people, and the court decisions in these cases cited aggravating factors in conjunction with aboriginal heritage. Factors such as the childhood abuse, substance problems, health issues, lengthy criminal records, minimal education, and chronic unemployment were cited as aggravating factors when the defendant was of aboriginal heritage.³³ Often, these factors were

²⁷ Kathleen Ferraro & Michael Johnson, "How Women Experience Battering: The Process of Victimization" (1983) 30(3), 325.

²⁸ *R v Dubois*, [2009], 773 ON CJ (available on CanLII), (Ont Ct J), Kukurin J.

²⁹ *Supra*, note 10.

³⁰ *R v C(H)* [2012], 16 ON CJ (available on CanLII), (Ont CT J), Murray J.

³¹ *Comack*, *supra* note 1

³² *Ibid*.

³³ *R v Barnaby*, [2013], 5266 ON CJ (available on CanLII), (Ont Ct J), Renauld J; *R v RHT*, [2012], 5609 ON SC (available on CanLII), (Ont Sup Ct), Shaw J.

cited as excuses, or explanations for the behaviour with the race/ethnicity of the defendant serving as a master status.

In *Zemarlayai*³⁴, the parties were in an arranged marriage, and there was a long history of domestic violence. When the complainant attempted to dissolve the marriage and gain custody of their child, the defendant responded with “this is how wives get killed”. Sparrow J dismissed the wife’s claim of domestic violence, stating that the mens rea was not satisfied, as the defendant must have intended his words to be taken seriously by the recipient of the threat, or intended to incite fear. He concluded there was not enough evidence to prove that the defendant intended his comment in the way the complainant interpreted it.

Furthermore, in both *Getachew*³⁵, and *Wardak*³⁶ the parties had immigrated to Canada together. In these cases, the complainants were unemployed, and economically reliant on the defendants, possessing minimal resources to assist them in leaving their abusive partners. In *Wardak*, the complainant was married to the defendant for 18 years, and had minimal education, and was subjected to chronic domestic violence.³⁷

Sentences

The sentences invoked in these cases differed greatly between cases, but can be categorized into low to mid-range jail sentences (under two years), high sentences (over two years), and other (suspended sentence, intermittent sentence, conditional sentence, and acquittal).

Low to mid-range sentences

In the majority of the cases, the defendant received a low to mid-range jail sentence, and often received credit for pre-trial jail time. In *RHT*,³⁸ the defendant assaulted a former partner, and received a 31-day jail sentence rather than the original 8 months, due to pre-trial custody. In *Barnaby*, the defendant received 22 days in jail, and 18 months probation for assaulting his current partner while on probation for assaulting a previous domestic partner.³⁹ In *Dubois*, the defendant received 3 months in jail for assaulting his common law partner, with this partner being the fourth one he assaulted in the past 6 years.⁴⁰ The low sentence assigned in *Filipowicz*, demonstrates the problematic structural response to domestic violence.⁴¹ In this case, the defendant pushed his estranged wife into the bathtub, held a soiled diaper to her face, and pulled a chair from under her, causing her to hit her head. He was given a 30 intermittent sentence, 4 months of house arrest, and 2 years of probation. In assigning this sentence, Feldman J asserted, the defense suggests “perhaps accurately” that the accused was too inexperienced and immature to handle the stresses of a marriage to a virtual stranger and birth of a son while still an accounting student. As noted earlier, it is unfortunate that his mother did not play a more positive role here. This assertion downplays the context of domestic violence, neutralizing and rationalizing the defendant’s behaviour.

³⁴ *Supra* note 17.

³⁵ *Supra* note 9.

³⁶ *Supra* note 14.

³⁷ *Ibid.*

³⁸ *Supra* note 33.

³⁹ *Supra* note 33.

⁴⁰ *Supra* note 31.

⁴¹ *Filipowicz*, [2011], 41 ON CJ (available on CanLII), (Ont Ct J), Feldman J.

Often, classifying the defendant as a first-time offender with no criminal record was a mitigating factor in sentencing. In *Getachew*, the defendant broke a cutting board over the complainant's head causing her to bleed and swell, kicked her in the leg, and forced her to drink bleach.⁴² Campbell J noted that the defendant was a first time offender, and subsequently sentenced him to 4 and a half months in jail, and a 120 hours of community service. In *Smith*, the defendant was charged with 4 counts of assault. He pinched his wife's legs, elbowed her in the stomach, threw forks at her, whipped her legs with wire, grabbed, hit and kicked her.⁴³ This was his third long term partner he had assaulted, and he subsequently received a 10 month jail sentence.

In a few cases, longer jail sentences were assigned. With *Brooks*, the defendant received 3 years with a 1 year, and 21 day pre-trial credit.⁴⁴ The defendant had punched his partner with a lighter, kicked, pushed and stomped on her head, and dragged her by her hair. The defendant also constantly threatened to kill her. Often the higher sentences for assaulting a partner or former partner were involved both sexual and domestic violence. In *S(D)*, the defendant was charged with 32 counts of sexual assault, 14 counts of assault with a weapon causing bodily harm, 4 counts of assault, and 5 counts of uttering threats.⁴⁵ The defendant would force his partner to engage in sexual intercourse with a friend of his, and assault her with various weapons (swords, poles, axe, and meat cleaver). He subsequently received 12 years incarceration. In *H(R)*, the defendant punched, kicked, and dragged his wife causing her to experience a tailbone fracture.⁴⁶ He also forced her to engage in sodomy with their children present in the room.

A guilty plea by the defendant was cited as a mitigating factor for reducing the defendant's sentence.⁴⁷ Renaud J in *Dunlop* stated that a jail term is required to denounce the instance of domestic violence, and deter the offender and public at large. He further noted that the 4-month jail term would have been more severe but for the late guilty plea which was assigned mitigating weight in the circumstances.

Other

Suspended Sentence

Suspended and conditional sentences were assigned in cases where mitigating factors were employed to contextualize the defendant's use of violence. Often these mitigating factors served to rationalize the violence, rather than contextualize it. In *Dounis*, Durno J cited mitigating factors to explain the defendant's violent behaviour.⁴⁸ These factors include an alcoholic father and sexual victimization the hands of a prior hockey coach. In *Edwards*, the defendant committed numerous assaults (such as biting and slapping) against his former partner, and unlawfully confined her.⁴⁹ West J assigned a suspended sentence in this case, noting that the complainant had stolen money from the defendant, and engaged in drug trafficking. He stated,

I should note that the complainant decided to use the money that was in her car as if it were her money. She enlisted the assistance of an individual that she knew to be a pimp and drug dealer to sell cocaine in attempt make a profit

⁴² *Supra*, note 9.

⁴³ *R v Smith*, [2011], 564 ON CA (available on CanLII), (Ont CA), Weiler JA, Blair JA, & Epstein JA.

⁴⁴ *R v Brooks*, [2012], 2996 ON SC (available on CanLII), (Ont Sup Ct), Allen J [*Brooks*].

⁴⁵ *S(D)*, *supra* note 12.

⁴⁶ *R v H(R)* [2012], 674 ON CJ (available on CanLII), (Ont Ct J), Zisman J.

⁴⁷ *R v Dunlop*, [2014], 44 ON CJ (available on CanLII), (Ont Ct J), Renaud J [*Dunlop*].

⁴⁸ *R v Dounis*, [2011], 2301 ON SC (available on CanLII), (Ont Sup Ct), Durno J [*Dounis*].

⁴⁹ *R v Edwards*, [2012], 519 ON CJ (available on CanLII), (Ont Ct J), West J.

for herself...This is no way justifies or diminishes the seriousness of the assaultive behavior or threats but does provide background and context to assessing her fear of Edwards at time she was involved in an intimate relationship with him.⁵⁰

The problem with this approach is that the context of the violence should be irrelevant, what matters is that violence was employed. As examined below, a complainant engaging in an affair was often cited as a mitigating factor for a domestic assault. Domestic violence should not be employed, regardless of the circumstances or reasons for it, unless in the context of self-defense. In *Hussain*, the defendant punched the complainant in the face, unlawfully confined her, and subsequently struck their daughter when she attempted to alleviate the situation.⁵¹ Fragomeni J assigned the defendant a suspended sentence.

Conditional Discharge

In *M(H)*, the defendant chronically assaulted his wife, and used a strap on his sons.⁵² When sentencing him, Hackland J noted that outside of his relationship he was an outstanding citizen with no criminal record, held leadership positions in the community and was part of the parent-teacher association at his children's school. He further noted that due to pre-trial custody, the defendant had already lost his family, employment, assets and reputation, and therefore should only receive a conditional discharge. In *Singh*, Ricchetti J assigned the defendant a conditional discharge, probation and community service for assaulting and uttering a death threat against his former wife.⁵³ It was noted in the case that the defendant's belief in the complainant carrying on an affair fueled the violent incident. Ricchetti J further noted that there was not a high degree or significant duration of violence, and that the threat employed in the current incident was due to the heated argument between the defendant and complainant. He noted that this does not excuse the threat, but it does contextualize it. In both these cases, the use of a conditional sentence serves to neutralize, and downplay the violence perpetuated against the complainants. It sends a message to the complainants, and society at large that the violence was not serious enough to warrant a harsher sentence. It also does not result in specific deterrence of such behaviour for the offenders themselves.

Acquittal

Two of the cases resulted in a full acquittal due to a cited lack of evidence. However, in both cases the judges downplayed and neutralized the violence perpetuated against the complainants. In *JE*, the defendant assaulted the complainant over an extended period of time, and during a mediation session threatened her in the presence of the mediator.⁵⁴ Conlan J acquitted the defendant, but sympathized with the complainant stating that she was "probably mistreated by the accused".⁵⁵ However he further stated, "I think the accused is a good father, but likely a not so good partner to the complainant. Perhaps a lesson in humility would assist him in the future".⁵⁶ He noted that there was minimal evidence to corroborate the complainant's testimony, including threatening text messages from the defendant, and a photograph of the bruise on her arm. Conlan J noted that the relevance of photo depends entirely on credibility of

⁵⁰ *Ibid* at p 12.

⁵¹ *R Hussain*, [2013], 5983 ON SC (available on CanLII), (Ont Sup Ct), Fragomeni J.

⁵² *R v M(H)*, [2014], 841 ON SC (available on CanLII), (Ont Sup Ct), Hackland J.

⁵³ *R v Singh*, [2014], 2289 ON SC (available on WL Can), (Ont Sup Ct), Ricchetti J [*Singh*].

⁵⁴ *Supra*, note 13.

⁵⁵ *Ibid* at 105.

⁵⁶ *Ibid* at 106.

the complainant, and the police statement only demonstrates the general volatility of the relationship between the parties.

In *Zemarlayai*, the defendant was acquitted after threatening to kill his wife, because there was not substantial enough evidence to prove his intent.⁵⁷ Sparrow J noted the history of domestic violence between this couple in their arranged marriage, but held that there no definitive proof that the defendant intended to kill his wife or cause her fear.

Aggravating Factors

Aggravating factors were referenced in some cases in order to contextualize the violence employed by the defendants. However, these factors often resulted in individualizing incidents of violence against women, rather than contextualizing it. There were similarities in aggravating factors across the cases. Childhood abuse was common among some of the cases, where the defendant either witnessed or experienced abuse at the hands of an adult.⁵⁸ In *Brooks*, the defendant's father, and his mother's partners physically abused him as a child.⁵⁹ In *Conway*, the defendant was sexually abused by a male hockey coach.⁶⁰ In all cases of childhood abuse, the perpetrator was a male. Childhood abuse was taken into account in the court decisions, perpetuating an inter-generational transmission theory of violence, where children learn to be abusive by witnessing or experiencing it themselves from a young age.⁶¹

Substance use was cited in some cases as factor in the abusive incident that resulted in the charge.⁶² The defendants in these cases were described as having a drug or alcohol addiction, or being intoxicated during the incident. In *RHT*, the Shaw J described the assault as being "fuelled by alcohol". In *Dubois*, the complainant rationalized the defendant's behaviour by referencing his past and current drug use, including oxycontin, percocets, marijuana, heroin, and cocaine. However, Kurkin J did not utilize the defendant's drug use an excuse for his behaviour.

Interestingly, in a number of the cases examined, the defendants excused their behaviour by claiming their partner or former partner had engaged in an extra marital affair with another man.⁶³ In *Galaprete*, the defendant received a 90-day intermittent sentence and 2 years probation, following his counsel's assertion that his behaviour was impulsive upon discovering his wife's affair. However in most of the cases where an affair was employed as a rationalization for the defendant's behaviour, a longer sentence was imposed. The defendant in *M.I.* received a 12-month sentence for assault with a weapon. The fact that some of these cases were spawned by accusations of an affair speaks to the role of hyper-masculinity that men in our society are socialized into. Men are not socialized to be abusive, but norms in our society perpetuate that violence as a means of attaining control of situations, and asserting dominance. This often results in men viewing violence as a socially sanctioned form of expression.

⁵⁷ *Supra*, note 17.

⁵⁸ *Barnaby*, *supra* note 28; *R v Conway*, [2013], 359 ON CJ (available on CanLII), (Ont Ct J), Martin J [*Conway*]; *R v Meade*, [2010], 18 ON CJ (available on CanLII), (Ont Ct J), West J [*Meade*]; *R v Powell*, [2012], 4106 ON SC (available on CanLII), (Ont Sup Ct), Eberhard J.

⁵⁹ *Supra*, note 44.

⁶⁰ *Supra*, note 58.

⁶¹ *DeKeseredy*, *supra* note 3.

⁶² *Bryce*, *supra* note 19; *Dunlop*, *supra* note 47; *R v Evans*, [2012], 5801 ON SC (available on CanLII), (Ont Sup Ct); *Getachew*, *supra* note 9; *Khasria*, *supra* note 21; *R v Menary*, [2012], 706 ON CA (available on CanLII), (Ont CA), Cronk JA, Pepall JA & Tulloch JA; *Dubois*, *supra* note 31; *RHT*, *supra* note 33; *Singh*, *supra* note 53.

⁶³ *Dounis*, *supra* note 43; *Galaprete*, *supra* note 7; *Getachew*, *supra* note 9; *H(R)*, *supra* note 46; *James*, *supra* note 26; *Mitchell*, *supra* note 26.

Neutralizing Language

In a number of the cases, the judges employed troubling language in addressing the structural issue of domestic violence. The criminal justice system is often the last resort, the pivotal savior for women who have been abused, and it is imperative that judges have a critical understanding of the issues surrounding domestic violence. There were instances where judges would acknowledge that a problem existed, but would not follow through in alleviating it. An example of this is in *Barilko*, where the judge observed that the respondent could benefit from the Caring Dad's Program, but the court did not compel his attendance by a sentencing order.⁶⁴

In other cases, there were examples of excusing and rationalizing defendants' behaviour. In *Filipowicz*, the judge suggested that the defendant was too inexperienced and immature to handle the stresses of a marriage to a stranger, and raise a son while still an accounting student.⁶⁵ The judge further stressed that it is unfortunate the mother did not play a more positive role here, with the mother being the complainant. The defendant in this case only received 30 days incarceration for 3 counts of assault on his domestic partner. In *Meade*, the judge rationalized the defendant's behaviour by referencing aggravating factors that were not directly related to his relationship with the complainant.⁶⁶ He stated "I have no doubt that Meade's violent outburst is directly related to his unresolved childhood difficulties, and to stress experienced after his guilty plea to assaulting his co-worker, the loss of his job, and knowledge he was going to be separated from his family for an extended period of time".⁶⁷ By focusing on aggravating factors rather than the actual assault, the judge is detracting from the purpose of the trial.

Conclusion

The response that the criminal justice system has to domestic violence is pivotal. As little as 30 years ago, domestic violence was barely considered a problem, let alone a societal structural issue. The issue here is about how domestic violence is handled beyond the arresting and charging phases, and into the sentencing phase. As this research demonstrates, there is a wide range of responses to domestic violence that are not entirely consistent with one another, and hardly contextual. The current approach to domestic violence in the criminal justice system is individualistic, and places emphasis on aggravating factors rather than the violence itself. This only results in alienating women as a group, and further victimizing abused women.

⁶⁴ *Supra*, note 8.

⁶⁵ *Supra*, note 41.

⁶⁶ *Supra*, note 58.

⁶⁷ *Ibid* at 46.

PART TWO: SEXUAL ASSAULT

Introduction

The purpose for the research initially was to examine and explore the discourse about sexual assault in the law. How we talk about sexual assault informs how we react to it when we hear allegations of sexual assault. It informs whether, at first glance, we will believe the complainant. Of particular importance is how judges talk about sexual assault because this discourse plays a large part in the result of the case. How general society discusses sexual assault and how judges talk about sexual assault are wholly interrelated.

There are many issues plaguing sexual assault complainants in the criminal justice system. They face obstacles at each stage in their journey to seek justice. From absurdly low reporting rates to unusually high “unfounding” or clearance rates, sexual assault victims are constantly faced with an uphill battle. Unfortunately, it is not one in which they are likely to end up “winning”. To “win” a sexual assault case is of course an incredibly simplistic and reductive way to describe the process of securing a conviction. The reality for victims of sexual assault is that irrespective of whether their perpetrator has been convicted, they remain victims of a horrible crime of sexual and gender inequality that can have lasting repercussions long after the conclusion of any trial. 460,000 Canadian women were victims of sexual assault in 2004.⁶⁸ Yet only 1,406 offenders were convicted of sexual assault in 2004. This means that 0.3% of perpetrators were held accountable while 99.7% were not.⁶⁹

The Research

The focus of my research was judicial discourse in criminal sexual assault cases. To that end, I reviewed 66 decisions compiled from LexisNexis Quicklaw from 2009-2014. 20 are sentencing decisions. To limit the area of research to similar and comparable decisions, I excluded all sexual assault cases with complainants under the age of sixteen.

The overwhelming majority are trial decisions. 49 of the cases led to convictions, fifteen ended in acquittals and new trials were ordered in two cases. The majority included the charge under section 271 of the *Criminal Code*. Two were charged under section 272 and eleven charged under section 273.

Of the sentencing decisions, six out of 20 had sentences of imprisonment of two years or less. eight had sentences of 2-6 years, four had sentences of more than six years and in one decision a conditional discharge was ordered. Probationary sentences were ordered in nearly all decisions, along with DNA orders, weapons prohibition and compliance with the Sex Offender Registration Act.

A full listing of the cases reviewed can be found at Table 2 along with the citation for each decision.

⁶⁸ Statistics Canada, *Criminal Victimization in Canada, 2004*, 25, No 7 (Juristat:Canadian Centre for Justice Statistics) at 23.

⁶⁹ Holly Johnson, “Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault” in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012) 613 at 632.

Themes in Discourse

There was always at least one of the themes in each decision, but there was usually a combination of multiple themes. I will discuss each in turn and the manifestations of each theme in the cases reviewed in the research.

Themes in the majority of decisions:

1. Eroticization of language
2. Neutralization of language
3. Focus on force
4. Focus on the credibility of complainants

1. Eroticization of Language

Eroticization of language refers to discourse that describes sexual assault in erotic or sexual terms. An example of this is describing a forced vaginal penetration as “sexual intercourse”. Many scholars have argued that eroticized language in this manner mutualizes sexual assault which places at least some of the responsibility on the victim. Instead of discussing sexual assault as a unilateral act by the perpetrator (“forced vaginal penetration”), the eroticization of language transforms the act into a mutual one between two people (“sexual intercourse”). This distinction is incredibly important because it frames the discussion on sexual assault. Moreover, eroticization of language reinforces the myth that sexual assault occurs because of some form of sexual depravity or impulse. This ties in with the next section on neutralization of language.

For example, the sentencing decision in *R v Phan* referred to the forced groping of an 18 year-old severely disabled resident in a long-term care facility as “massaging” the breasts of the woman.⁷⁰ The very first sentence in the sentencing decision in *R v Laz-Martinez* asks what the appropriate sentence is when a man has “intercourse” with an unconscious woman.⁷¹ Note that this is a sentencing decision, so the accused has already been found guilty. To use the term “intercourse” instead of sexual assault or forced vaginal penetration is clearly inappropriate. The term “intercourse” appears thirteen more times in the decision. In *R v M.S.*, the decision refers to sexual assault as “sexual relations”. Likewise, the decision in *R v Woudenberg* referred to the sexual assault as the “kiss” fifteen times which infers at least some level of mutuality when it was proven to be a unilateral act forced upon the complainant.

2. Neutralization of Language

This narrative or discourse refers to sexual assault as one that occurs in a vacuum. Judicial discourse rarely refers to the sex and gender inequality as a reason for sexual assault. Instead, there is a desire to categorize sexual assault as an isolated, perverted incident. This highly individualized lens removes the gendered violence issue from the narrative completely. Judges ought to discuss the gender inequality and the dominance of women, and not just the literal or physical domination, at play in a sexual assault. A sexual assault is the manifestation of the ability of a man to dominate a woman who is not considered his equal. Yet in judicial decisions, the language treats men and women as if they begin on equal playing fields and are sexual equals in society. To blindly accept this assertion is to do a great disservice to victims of sexual assault who face an uphill battle in proving that the sexual assault even occurred. For example, in *R v Rohrich*, the trial judge found that the complainant consented to a threesome despite their being no positive evidence adduced apart from a conversation she had with two military cadets at a military base

⁷⁰ Paras 7 & 18.

⁷¹ Para 1.

discussing threesomes.⁷² Nowhere in this decision was an analysis of the power dynamics at play with a teenager alone in a dorm room with two military cadets and how that might alter or flavor the evidence brought.

There are systemic and contextual factors at play in each sexual assault that are routinely ignored by judges. Instead, to explain the reason for a sexual assault, there is a tendency to describe it as a “sexual” impulse. Some judges even refuse to find guilt where there is no obvious “sexual purpose” to the assault. This is completely inappropriate since sexual purpose is not an element to a sexual assault. For example, in *R v Lorette*, the complainant alleged that while leaning over a wicket at a bank, she felt the accused’s erection press into her lower back. The judge noted that he found it difficult to accept that the accused would commit such an act in the middle of the day at a public bank. If this was not enough, the judge went on to state that he was “inclined...to construe the defendant’s characterization as meaning playful rather than sexual”.⁷³ In essence, the judge acquitted the accused because he found the alleged acts too unreasonable. If this reasoning were applied in every case no conviction would ever be secured. The trial decision of *R v Lutoslawski* was overturned on appeal because the trial judge erred by acquitting the accused on the ground that that while there was a sexual purpose for the touching, it was not “overtly sexual, per se”.⁷⁴ The focus on finding a sexual purpose to a sexual assault completely ignores the possibility that sexual assault can occur for reasons that have nothing to do with a sexual purpose. Sexual assault is an act of dominance over women and a form of gendered violence that reinforces systemic gender inequality. The violence of sexual assault is merely an expression of the inequality.⁷⁵

3. Focus on Force

Another predominant theme found in the sexual assault cases was the focus on physical force or violence in sexual assault. Force, or lack thereof, was mentioned and used as a means to justify a lengthier or shorter sentence in every decision reviewed. This focus on force informs the likelihood of conviction and length of sentences. This is in part due to the hierarchical nature of the *Criminal Code* provisions on sexual assault. However, it is also due in part to rape myth narratives that are overwhelmingly evident and seemingly pervasive in the criminal justice system. If physical force is present and there is evidence of violence (bruises, injuries etc), the sexual assault is more likely to be reported, “founded”, convicted and the perpetrator is more likely to be incarcerated. Where there is evidence of violence, it is easier for the complainant to prove that a sexual assault even occurred. This means that where there was no physical force, the onus is even greater for the complainant to prove that there was no consent. If the complainant did not resist the attack, and there could be a multitude of reasons why she may not resist, she can expect to be grilled on cross-examination on that point. This further ties in with the next theme.

4. Focus on the Credibility of Complainants

The credibility of the complainant is front and center in a criminal trial for sexual assault. Often, it is her word against the perpetrator since crimes of sexual assaults are frequently committed in private. In *R v Animodi*, the accused was acquitted since there was no third party

⁷² Para 118.

⁷³ Para 31.

⁷⁴ Para 34.

⁷⁵ Catharine MacKinnon, “A Sex Equality Approach to Sexual Assault” (2003) 989 Ann NY Acad Sci 265 at 267.

evidence and both were found to be credible. Since there tends to be a lack of corroborating evidence, the credibility of the complainant and the accused become the focus. However, the complainant often receives the brunt of the focus since it is she who must prove her case (and herself) to the court.

A sexual assault trial, which on average can last about 2 years, can occur a long time after the actual assault. As a result, complainants can often forget certain facts like the time and date and exact nature of the sexual assault. This is frequently cited as a factor that hurts the credibility of complainants. The complainant's credibility was a key factor in finding acquittals in thirteen cases.⁷⁶ This does not mean that the complainant's credibility was not an adverse to the Crown in other decisions.

Some complainants are simply emotionally incapable of being on a witness stand. This is particularly understandable since defence lawyers are notoriously aggressive and invasive when it comes to the cross-examination of sexual assault victims. The sexual behavior or history of the complainant is frequently used against her. Sometimes it is explicit, like in *R v Rohrich* and *R v G.T.* If a complainant is too emotional on the stand, it will be said that she was too "dramatic" and obviously malingering. The trial judge in *R v G.T.* would not infer anything from the evidence that the complainant was visibly upset immediately following the alleged sexual assault since it was clear to him that she was not "adverse to drama".⁷⁷ If she is not emotional enough on this stand, it will be said that she could not have been the victim of a crime since she did not seem affected and so she must obviously be malingering. The credibility of complainants is attacked from every possible angle. Unless a complainant fits the rape myth narrative of the "ideal victim" (a morally upright, articulate White woman who is attacked in public while physically resisting and who then reports the assault immediately), she will face every possible obstacle before being believed. This is corroborated by the research which found that in cases that had an "ideal victim", the credibility of the complainant was hardly an issue.⁷⁸

Credibility is also an issue where the accused is not a stranger to the complainant. Often the complainant will be attacked if she is not "cautious" enough or if she appeared to be happy after the alleged assault. The court in *R v R.L.* faulted the complainant because she did not act how an "abused" woman would act if sexually assaulted by her husband.⁷⁹ The decision went on to discuss the accused in glowing terms. In *R v H.V.*, the court disbelieved the complainant's evidence that she was in fear of her uncle because she continued to attend family gatherings and one time during a family gathering she went into the house alone. The court's reasons here chastise the complainant for not wanting to cut off all relations with her family to avoid being sexually assaulted.

Conclusion

It is clear that there are problematic narratives at play in Canadian sexual assault law. No one institution or group of people can shoulder the entirety of the blame. The issue with rape myth narratives is that they have become so pervasive and entrenched that it is not always clear what is "problematic" language since that has been the language used for years. Modern judicial decisions rarely use "obvious" rape myth narratives in the traditional sense. Judges are not

⁷⁶ *R v Seaton*; *R v G.T.*; *R v E.T.*; *R v H.V.*; *R v Jack*; *R v Rohrich*; *R v G.P.*; *R v R.L.*; *R v C.D.H.*; *R v Wood*; *R v Burr*; *R v L.W.*; *R v S.A.T.*;

⁷⁷ Para 49.

⁷⁸ *R v Thomas*; *R v B.U.*; *R v Jorgge*; *R v R.T.*; *R v G.A.*; *R v Lally*; *R v Graham*; *R v Masakayash.*

⁷⁹ Para 93.

chastising complainants for not wearing a “bonnet and crinolines”⁸⁰ anymore but the underlying assumptions continue to be present in decisions. Judges are not the only ones to blame. In fact, not every word in a decision is necessarily that one spoken by the judge. In many instances, it is the language of the lawyers arguing the case or from the complainants themselves. The intractability of rape myth narratives make it so even victims of sexual assault are perpetuating the same discourse that can be so harmful to their claims.

⁸⁰ *R v Ewanchuk*, 998 ABCA 52, 13 CR (5th) 324, rev'd [1999] 1 SCR 330, 169 DLR (4th) 193.

Conclusion

Elliott Currie, a criminologist at the University of California Irvine suggests that placing sole responsibility for punishing rape, stalking, and domestic violence with the courts compartmentalizes social problems along bureaucratic lines.⁸¹ This approach focuses on proving evidence, how many times the offender has committed an offence, aggravating factors such as alcohol abuse, remorse, a guilty plea, and so on. It can be equated with a mathematical formula, that if certain characteristics are present, then the defendant is likely to receive a more lenient sentence.

The question then becomes, where do we go from here? Violence against women is a constantly evolving and never-ending social issue. Approaches to prevention begin in our communities, and end in the criminal justice system. It is difficult to protest change at the judicial level, as that requires a legislative response. However, at the municipal level, it may be beneficial for police departments to keep summaries of the amount and types of domestic and sexual violence complaints, the percentage of unfounded complaints, the manner of investigation, and what charges were authorized.

The subject area of the research is incredibly broad and expansive. There are many areas to pursue that this research has only just scraped the surface. While the research conducted this semester is a good start, there is certainly more work and research that can be done. In particular, there needs to be a systematic calculation of the qualitative language used in judicial decisions and its frequency. Moreover, it would also be helpful to have an in depth analysis of solely sentencing decisions and the effect of problematic narratives on the sentencing of perpetrators of domestic and sexual assault.

Gendered violence should not exist in the first place, and it is often rooted in how we define masculinity as 'dominance over women'. There needs to be a change at the cultural level in how we define masculinity and gender dynamics. We must contest the fact that male violence against women is defined solely as a problem for women, yet an almost normative behaviour for men. Providing members of society with a more profound understanding of these social phenomena from the perspective of women is critical in challenging and preventing gendered violence.

⁸¹ Elliot Currie, *Confronting Crime: An American Challenge* (New York: Pantheon, 1985).

TABLES

TABLE 1: Domestic Violence Cases

Case	Year	Court	Judge	Charge	Conviction	Sentence	Citation
R v Barnaby	2013	Ont Ct J	Renaud J	s 264(1)	Y	Jail, no enhanced credit	2013 ONCJ 5266
R v Barilko	2014	Ont Sup Ct J	C Hill J	s 264(1)	N	Absolute discharge	2014 ONSC 1145
R v Brooks	2023	Ont Sup Ct J	Allen J	S 268	Y	3 years jail with 1 year & 21 days pre-sentence credit. 2 years probation, 10 year fire arm and weapons prohibition, and DNA order	2012 ONSC 2996
R v Bryce	2013	Ont Sup Ct J	Ricchetti J	S 267(a)	Y	18 months jail with pre-sentence credit for 3 months custody and 3 months house arrest	2013 ONSC 2637
R v C(G)	2010	ONCA	MacFarland, Feldman & Karakatasanis JJA	S 265(2)	Y	6 years jail	2010 ONCA 539
R v C(H)	2012	Ont Ct J	Murray J	s 264(1)	Y	n/a	2012 ONCJ 16
R v Conway	2013	Ont Ct J	Martin J	s 279(2) s 264(1) s 265	Y	18 months jail	2013 ONCJ 359
R v Dounis	2011	Ont Sup Ct J	Durno J	s 265	Y	30 days jail intermittently	2012 ONSC 2301
R v Dubois	2009	Ont Ct J	Kukurkin J	s 266	Y	3 months jail, 3 years probation	2009 ONCJ 773
R v Dunlop	2014	Ont Ct J	Renaud J	s 265	Y	4 months jail, 3 years probation, firearm and weapon prohibition, and DNA order	2014 ONCJ 44
R v Edwards	2012	Ont Ct J	West J	s 264(1) s 267(a) s 266 s 279(2)	Y	Suspended sentence, 3 years probation, restraining	2012 ONCJ 519

						order, firearm and weapon prohibition, and DNA order	
R v Evans	2012	Ont Sup Ct J	n/a	s 265 s 264(1) s 271	Y	4 years jail, weapon and firearm prohibition & DNA order	2012 ONSC 5801
R v Filipowicz	2011	Ont Ct J	Feldman J	S 265	Y*	30 days jail intermittently, 4 months house arrest, 2 years probation	2011 ONCJ 41
R v Galapate	2010	Ont Ct J	Vaillancourt J	s 264(1) s 266	Y	90 days jail to be served intermittently, 2 years probation, DNA order and weapon & firearm prohibition	2010 ONCJ 538
R v Getachew	2013	Ont Sup Ct J	Campbell J	s 264(1) s 265(1)	Y	2 years jail with 19.5 months pre-sentence credit (4.5 months jail), 2 years probation (firearm and weapon prohibition, restraining order, 120 hours community service)	2013 ONSC 3219
R v H(R)	2012	Ont Ct J	Zisman	s 271 s 267(1) s 264(1)	Y	4 years jail, DNA order, restraining order, weapon & firearm prohibition for 10 years, and added to Sex Offender Registry	2012 ONCJ 674
R v Harry	2009	Ont Ct J	West J	s 265(1)	Y	1 months, 10 days jail & 2 years probation	2009 ONCJ 645
R v Hussain	2013	Ont Sup Ct J	Fragomeni J	s 265(1)	N	Suspended sentence for 9 months & weapon and firearm prohibition	2013 ONSC 5983
R v Ibrahim	2009	Ont Ct	Nicholas J	s 267(a)(b)	Y	n/a	2009

		J					ONCJ 517
R v James	2010	Ont Sup Ct J	Campbell J	s 239	Y	Custody (sentence not specified yet)	2010 ONSC 3160
R v JE	2014	Ont Sup Ct J	Conlan J	s 264(1) s 266 s 264(2)(a) s 264(2)(b)	N		2014 ONSC 860
R v Khasria	2013	Ont Sup Ct J	Lenz J	s 267	N	New trial ordered	2013 ONSC 5707
R v Lutete	2014	Ont Ct J	Bovard J	s 264(1)	N	Charges dismissed	2014 ONCJ 11
R v M(H)	2014	Ont Sup Ct J	Hackland J	s 264(3) s 264(1)	N	Conditional discharge with 2 years probation	2014 ONSC 841
R v Martin	2009	ON CA	Laskin, Gillespe & Rouleau JJA	s 264(1) s 266	Y	Leave to appeal sentence	2009 ONCA 62
R v Meade	2010	Ont Ct J	West J	s 264(1) s 267	Y	6 months jail, 3 years probation	2010 ONCJ 18
R v Menary	2012	ON CA	Crank, Pepall & Tulloch JJA	s 276	Y	12 months jail, 3 years probation	2012 ONCA 706
R v M.I.	2010	Ont Ct J	Nicholas J	s 267(1)(a)(b)	Y	12 moths jail, 3 years probation, weapon & firearm prohibition, and DNA order	2010 ONCJ 37
R v Mitchell	2009	Ont Ct J	Filippis J	s 264(1) s 267	N	Stay of proceedings	2009 ONCJ 66
R v Powell	2012	Ont Sup Ct J	Eberhard J	s 753 (dangerous offender)	Y	10 years jail with 2 years pre-sentence credit	2012 ONSC 4106
R v Rashid	2009	Ont Ct J	Sosna J	s 266	Y	No stay of proceedings	2009 ONCJ 9745
R v RHT	2012	Ont Sup Ct J	Shaw J	s 266 s 145(3) s 733(1)	Y	6 months jail (assault), 60 days consecutive (breach), 30 days concurrent (breach) with 6 months, 29 days pre-sentence credit	2012 ONSC 5609
R v S(D)	2013	ONCA	MacPherso n, Blair & Juriansz	s 271(1) s 265(1)(3) s 264(1)	Y	12 years jail	2013 ONCA 244

			JJA	s 154(3) s 84(1)			
R v Sheik	2014	Ont Ct J	Blouin J	s 276(1)(a) s 145(2)(a) s 264(1)	Y	200 days jail, 2 years probation and weapon prohibition	2014 ONCJ 37
R v Singh	2014	Ont Sup Ct J	Ricchetti J	s 264(1) s 266	N	Conditional discharge, 2 years probation, and 5 years weapon prohibition	2014 ONSC 2289
R v Smith	2011	ON CA	Weiler, Blair & Epstein JJA	s 264(1) s 266 s 271(1)	Y	14 months jail; no trial ordered	2011 ONCA 564
R v Vallecillo	2014	Ont Ct J	Baldwin J	s 267(1)	N	Absolute discharge	2014 ONCJ 138
R v Wardak	2011	Ont Ct J	Wright J	s 264(1) s 266	Y	90 days jail with 57 days pre- sentence credit, and 3 years probation	2011 ONCJ 583
R v West	2013	Ont Ct J	Filippis J	s 264(1) s 265(1)(c)	Y	16 months jail, 3 years probation, DNA order, weapon and 5 year firearm prohibition	2013 ONCJ 460
R v Zemaryalai	2011	Ont Ct J	Sparrow J	s 264(1)	N	Charges dismissed	2011 ONCJ 68

TABLE 2: Sexual Assault Cases

Case	Year	Court	Judge	Charge	Conviction	Sentence	Citation
R v J (A)	2011	SCC	McLachlin CJC	s 271	Y	see sentencing	2011 SCC 28
R v Phan	2013	ONCA	Gloria Epstein JA	s 271	Y	8 mos in jail + 2 yrs probation	2013 ONCA 787
R v Alboukhari	2013	ONCA	Gloria Epstein JA	s 271	New Trial	n/a	2013 ONCA 581
R v Marquaye	2013	Ont Sup Ct J	JM Wilson J	s 271	Y	see sentencing	2013 ONSC 1753
R v Judge	2013	Ont Sup Ct J	NE Garton J	s 271	Y	detention in a penitentiary for an indeterminate period, order to comply with Sex Offender Information Registration Act for life	2013 ONSC 6803
R v L.A.M.	2011	Ont Ct J	J Kukurin J	ss 271, 348	Y	30 mos	2011 ONCJ 387
R v Seaton	2012	Ont Sup Ct J	KL Campbell J	ss 271, 264(2)(b)	N	n/a	2012 ONSC 6070
R v Vant	2010	Ont Sup Ct J	SS Seppi J	ss 271, 272, 245, 246	Y*	see sentencing	2010 ONSC 2474
R v Stratton	2009	Ont Ct J	PL Bellefontaine J	s 273.1(2)(c), 273.1(2)(e)	Y*	see sentencing	2009 ONCJ 459
R v Stratton	2010	Ont Ct J	PL Bellefontaine J	ss 273.1(2)(e), 752, 753	Y	3 yrs and 2 days followed by 10 yr long term offender order	2010 ONCJ 600
R v D.A.E	2013	Ont Sup Ct J	G Roccamo J	s 271	Y	see sentencing	2013 ONSC 5939
R v J.U.	2011	Ont Ct J	SR Clark J	ss 271, 151, 273(1), 463(d), 715.1	Y*	see sentencing	2011 ONCJ 457
R v W.R.	2012	Ont Sup Ct J	KD Coats J	ss 271, 145, 266, 267	Y	2 yrs less 4 days	2012 ONSC 3935
R v M.G.	2012	Ont Sup Ct J	TA Bielby J	ss 271, 266, 264.1(1)(a)	Y*	see sentencing	2012 ONSC 5722

R v D.M.L.	2010	Ont Sup Ct J	H MacLeod-Beliveau J	ss 88, 246, 273(2)(b), s279(2), 811	Y	indeterminate imprisonment (dangerous defender designation)	2010 ONSC 806
R v G.T.	2013	Ont Sup Ct J	KL Campbell J	s 271	N	n/a	2013 ONSC 6472
R v Lutoslawski	2010	ONCA	DH Doherty	ss 271, 153, 265(3)(d), 273.1(2)(c)	Y*	see sentencing	2010 ONCA 207
R v Crangle	2010	ONCA	DH Doherty	ss 271, 273, 265	Y	see sentencing	2010 ONCA 451
R v Doodnaught	2013	Ont Sup Ct J	JD McCombs J	s 271	Y	see sentencing	2013 ONSC 8022
R v F.L.	2009	ONCA	DR O'Connor ACJO	271, 273.1	Y	4 yrs	2009 ONCA 813
R v Thomas	2010	ONCA	KM Weiler	271	Y	3 yr custodial sentence	2010 ONCA 662
R v J.S.	2012	ONCA	WK Winkler CJO	271	Y	see sentencing	2012 ONCA 271
R v Zhao	2013	Ont Ct J	RN Fournier J	271, 279(2)	Y	34 mos imprisonment + 3 yr probation	[2013] O.J. No. 6105
R v Hilan	2013	Ont Ct J	HL Fraser J	271, 430(1)(d)	Y	6 mos imprisonment, 2 yr probation, comply w Sex Offender Registration Act for 20 yrs, DNA order	[2013] O.J. No. 6183
R v B.U.	2013	Ont Ct J	JC George J	ss 271, 261	Y	18 mos conditional imprisonment, 30 mos probation, 10 yr s 110 prohibition, 10 yr compliance w Sex Offender Information Registration Act, DNA order	2013 ONCJ 475
R v R.L.	2013	Ont Ct J	LM Baldwin	s 271	Y	see sentencing	2013

			J				ONCJ 464
R v Brown	2013	Ont Ct J	DA Fairgrieve J	s 271, 153.1(1)(a)	Y*	see sentencing	2013 ONCJ 203
R v E.T.	2013	Ont Ct J	GJ Brophy J	s 271	N	n/a	2013 ONCJ 48
R v M.L.	2013	Ont Ct J	JS Nadel J	s 271	Y	see sentencing	2013 ONCJ 37
R v H.V.	2013	Ont Ct J	JW Bovard J	s 271	N	n/a	2013 ONCJ 471
R v Jorgge	2010	Ont Sup Ct J	JM Wilson J	ss 271, 246(b)	Y	see sentencing	2010 ONSC 6272
R v Jack	2012	Ont Sup Ct J	JS Fregeau J	ss 271, 266	N	n/a	2012 ONSC 3469
R v Katsnelson	2010	Ont Sup Ct J	IA MacDonnell	s 271, 273	Y	5+3 years imprisonment	2010 ONSC 2246
R v Wylie	2012	Ont Sup Ct J	C Hill J	s 273.1	Y	see sentencing	2012 ONSC 1077
R v Rohrich	2009	Ont Sup Ct J	PF Lalonde J	s 271	N	n/a	[2009] O.J. No. 4047
R v Desjourdy	2013	Ont Ct J	TR Lipson J	s 271, s 265	N	n/a	2013 ONCJ 170
R v Campbell	2012	Ont Ct J	PAJ Harris J	s 271	Y	see sentencing	2012 ONCJ 86
R v Teepell	2009	Ont Ct J	KL McKerlie J	s 271	Y	see sentencing	[2009] O.J. No. 3988
R v J.S.	2011	Ont Sup Ct J	R Leroy J	s 271,	Y	3 yrs for s 271 conviction + 6 mos for forcible confinement + DNA order + 20 yrs on Sex Offender Registry	2011 ONSC 4765
R V Laz- Martinez	2011	Ont Ct J	DP Cole J	s 271	Y	2 yrs imprisonment + 3 yrs probation + 10 yr weapon prohibition + DNA order	2011 ONCJ 115
R v Lorette	2010	Ont Ct J	M Green J	s 271	N	n/a	2010

							ONCJ 259
R v S.S.	2012	Ont Sup Ct J	JM Fragomeni J	s 271	N	n/a	2012 ONSC 2037
R v Obgamichael	2014	Ont Sup Ct J	G Trotter J	ss 271, 733.1	Y	18 mos imprisonment for s 271 + 12 mos for breach of probation + 3 years probation + DNA order + SOIRA order	2014 ONSC 1693
R v G.P.	2011	Ont Sup Ct J	R Leroy J	s 271	N	n/a	2011 ONSC 4763
R v R.L.	2013	Ont Sup Ct J	ER Tzimas J	s 271. 266	N	n/a	2013 ONSC 1247
R v M.L.	2011	Ont Ct J	CS Dorval J	s 271	Y	indefinite imprisonment	[2011] O.J. No. 6324
R v R.T.	2010	Ont Sup Ct J	DG Price J	s 271	Y	see sentencing	2010 ONSC 1626
R v C.D.H.	2013	Ont Sup Ct J	TD Ray J	Ss 271, 145(3), 266, 279(2)	N*	n/a	2013 ONSC 7789
R v D.T.	2011	Ont Ct J	LC Dean J	s 271	Y	see sentencing	2011 ONCJ 213
R v G.A.	2013	Ont Sup Ct J	C Conlan J	s 271	Y	see sentencing	2013 ONSC 610
R v Wood	2013	Ont Sup Ct J	FB Fitzpatrick J	s 271, 267(b), 279(2)	N*	n/a	2013 ONSC 1309
R v Lally	2012	Ont Ct J	JD Keast J	s 271	Y	see sentencing	2012 ONCJ 397
R v Burr	2010	Ont Ct J	JA De Filippis J	s 271	N	n/a	2010 ONCJ 149
R v Satkunarajah	2012	Ont Sup Ct J	R Beaudoin J	s 271, 253, 264.1, 279	Y	2.5 yrs imprisonment + DNA order + weapon prohibition + 1 yr driving prohibition	2012 ONSC 6470
R v Gomes	2010	Ont Ct J	FL Forsyth J	s 271	Y	see sentencing	2010 ONCJ 461

R v J.H.	2012	Ont Ct J	Melvyn Green J	s 271	Y	conditional discharge- 1 yr probation + 10 yr sex offender registration order	2012 ONCJ 753
R v Graham	2010	Ont Sup Ct J	Wilson J	s 271	N	n/a	[2010] O.J. No. 6055
R v L.W.	2012	Ont Ct J	PT Bishop J	s 271	N	n/a	2012 ONCJ 270
R v Animodi	2014	Ont Sup Ct J	JE Kelly J	s 271	N	n/a	2014 ONSC 1975
R v S.A.T.	2014	Ont Sup Ct J	BA Glass J	s 271, 153, 122, 163.1	N	n/a	2014 ONSC 1472
R v I.W.S.	2014	Ont Sup Ct J	DC Shaw J	s 271, 153	Y	2.5 yrs imprisonment (less 647 days time served) + DNA order + weapon prohibition + Sex Offender Registry order	2014 ONSC 791
R v Woudenberg	2014	Ont Ct J	PT Bishop J	s 271	Y	see sentencing	2014 ONCJ 97
R v M.S.	2013	Ont Sup Ct J	ER Tzimas J	s 271	Y	see sentencing	2013 ONSC 7066
R v Judge	2013	Ont Sup Ct J	NE Garton J	s 271	Y	indeterminate imprisonment (dangerous defender designation)	2013 ONSC 6803
R v Ralph	2014	Ont Sup Ct J	NJ Spies J	s 273	Y	see sentencing	2014 ONSC 1376
R v Masakeyash	2010	Ont Ct J	PT Bishop J	s 272(1)(c), 273	Y*	see sentencing	2010 ONCJ 210

*This denotes that the accused was acquitted of some charges