An Analysis of the New Sexual—Assault Laws*

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Le texte de la loi C 127, mise en vigueur le 4 janvier 1983, ne contient plus les termes "viol" et "agression indécente" considérés archaïques: les époux des deux sexes peuvent dorénavant être accusés d'agression sexuelle. La loi sera ainsi, espère-t-on, moins discriminatoire. Les crimes sexuels sont le plus souvent commis par des hommes, et 90 p. 100 des victimes de l'inceste sont des femmes. L'auteure étudie également les conséquences de cette nouvelle loi pour ce qui concerne la pornographie et l' "indécence vulgaire". En rendant moins sévères les sentences pour agression sexuelle, on prend le risque que le crime soit considéré comme moins grave. La disparition du mot "viol" peut entraîner l'invalidation légale des actes que les femmes violées subissent.

Bill C-127 received royal assent on October 27, 1982, and became enforceable as of January 4, 1983. It does away with the terms *rape* and *indecent assault* and creates three levels of seriousness of sexual assault: (1) sexual assault, (2) aggravated sexual assault, (3) sexual assault with a weapon or threats to a third party. The new law makes it possible for a spouse of either sex to be charged with sexual assault whether or not the couple is living together at the time of the alleged assault and removes the spousal-immunity clause relating to giving evidence against one another in respect of these and offences against persons under fourteen.

Advocates of Bill C-127 regard the terms *rape* and *indecent assault* as archaic and inflammatory. Doing away with these terms will also tend to alleviate some of the sex discrimination inherent in sexual-assault laws. Stressing the assaultative rather than the sexual nature of sex offences will remove some of the stigma attached to such charges and serve to correct public misperceptions about the nature of such acts.

There is an abiding principle of social denial that female persons are systematic victims of sexual violence. We are all socialized with myths such as: "Every woman secretly wants to be dominated," it is "natural" for men to pressure women to have sex, and women are "notoriously seductive" in soliciting sexual attention from males. It is fashionable in our culture to associate sex with violence and to portray women as willing victims of brutality. However, certain sexual crimes are gender-specific. That is, forcible sex is perpetrated by males upon females far more frequently than the reverse situation. Also, approximately 90 per cent of the victims of incest and sexual abuse are female.

Bill C-127 does not address the pressing issue of pornography as a form of institutionalized, acceptable violence toward women, nor was the Standing Committee on Justice able to define the characteristics and legal limits of child pornography. The absence of limits applied to "Brutality Chic" advertising and pornography is the direct result of enculturation: misogyny is a cultural institution. Indeed, the new sexual-assault laws embody the concept that, if the alleged victim agrees to the use of force, there is no assault.

Furthermore, under Bill C-127 it is now a defence for the accused to use the argument that a girl under sixteen appeared to be older, whereas, previously, ignorance of age was no defence. Moreover, in respect of a complainant under fourteen, consent is a defence only when the accused is less than three years older than the complainant. Hence our society is "approving" of sex between peers while attempting to protect young persons from sexual abuse by authority figures/adults.

It is assumed that only heterosexual peers will engage in such acts; the term *indecent assault* may have vanished from the law books, but the charge of gross indecency still applies. One hardly dares argue for consistency in such a homophobic society, but either we dispose of the word *indecent* altogether or retain categories of *decency* — in which case we are really retaining moralistic attitudes toward sexual behaviour. Bill C-53, the predecessor of Bill C-127, attempted to win a lower age of consent for homosexual partners (eighteen from twenty-one) but went the way of political "prudence" in regard to any discussion of the rights of homosexuals. Under the new law heterosexual adolescents aged fourteen and under are assumed to be capable of informed consent; homosexual partners wait an additional seven years to be regarded as competent to make such a decision.

However, just what gains have been won by the new sexual-assault bill? After all, the bill is the result of briefs and summaries presented by many women's groups, rape-crisis-centre personnel, and legal professionals.

- The complainant is no longer required to provide more than ordinary corroboration applicable in any assault charge;
- The requirement of recent complaint has been replaced by ordinary rules of evidence;
- Consent to sexual acts cannot be inferred by the complainant's lack of resistance if there appears to have been force, threats of force, fraud, or the exercise of authority over the alleged victim;
- The jury/judge must ascertain reasonable grounds for the belief of the accused that s/he had the consent of the complainant: honest belief, however unreasonable, is no longer sufficient;

• There is some attempt to exclude from court evidence of the sexual activity of the complainant with any person other than the accused. Such evidence may still be entered where (1) it rebuts evidence introduced by the prosecution; (2) it pertains to mistaken identity of the accused; and (3) it is evidence of sexual activity that took place on the same occasion, leading to the reasonable belief on the part of the accused that s/he had obtained the complainant's consent. Evidence regarding the sexual reputation of the complainant cannot be admitted to challenge or support the credibility of the witness;

• Lastly, spouses can now be charged with sexual assault on one another and are compelled to give evidence against one another, as they have always been required to do in cases of physical assault. They are also now obligated to give evidence against one another in respect of offences against persons under fourteen. These include charges involving causing death by criminal negligence, murder, manslaughter, infanticide, attempted murder, child abduction, and sexual abuse of children. The "sanctity of the family" appears to be essentially modified under the guidelines of Bill C-127; possibly the result will be the additional protection of dependants in the care of (an) abusing adult(s).

I spoke with a Crown attorney in relation to some of the ramifications of this bill. It was apparent from this conversation that, lacking precedents in case law, he and many other Crown attorneys are currently confused about how to apply the new sexual-assault categories. On the surface, kissing or fondling could result in a six-month conviction if it occurs with a non-consenting partner of either sex. Aggravated sexual assault would pertain to wounding, maiming, or disfiguring the alleged victim and could still result in a life sentence. Fourteen years, however, is the suggested sentence for injury or threat which endangers someone's life. Sexual assault with a weapon or threats to a third party would draw ten years and includes multiple acts of forcible sex, popularly designated as "gangbangs."

The court, it appears, would need to decide upon the degree of bodily harm or permanent damage undergone by an alleged victim. Courts have rarely known what to do about psychological, non-physical trauma which in itself changes lifestyle and interpersonal ways of relating.

Reducing sentences for sexual assault may very well reduce the concept of the severity of the crime; it is doubtful indeed whether reducing sentences will result in more convictions as is somehow hoped. Indeed, by removing the word *rape* from criminal law, legal experts may very well have added to the invalidation of women's experience of rape. The word is very specific, very accurate, and far less vague than the term *sexual assault.*

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