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"A Most Atrocious Crime": Sex Crimes against the Woman-Child in Early Nineteenth-Century Montreal

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> On Thursday last a most atrocious crime was committed in the parish of St Joseph de Chambly. A wretch, named Joseph Mass[é], induced a girl of 7 years of age to drink rum until she was intoxicated; after which he violated her person with circumstances of aggravation too shocking to be detailed. He has been committed to gaol, and a legal investigation of the affair is going on.[1]

This account from 1826 is illustrative of the phenomenon of sexual abuse of female children during the first half of the nineteenth century. Offering scant details, it merely hints at the sordid and violent nature of the crime. More tellingly, it omits mention that the accused was the child's uncle. The language of villainy, the "atrocious crime" committed by a "wretch," reflects the evocation of pollution and disgust common to these crimes of the period. Despite the evidence that was to come out, this case, like so many others, resulted in acquittal within the strictures of a jurisprudential system intersected by patriarchy, racism, classism, and other social constructs.

Sexual violence was a common feature of nineteenth-century life in Montreal, as indeed it would later be in Canada generally.[2] Cases of sexual assault appeared recurrently within the judicial archives and newspapers (even if only in truncated form), and no doubt scores of incidents went undisclosed and unreported. It was a sad reality that, then as now, children were a particularly vulnerable group. In a time

prior to widespread social reform movements, child welfare societies, and legislative concern over the safety of children, the notion of children as rights holders was still very much inchoate.[3]

This paper seeks to add to our understanding of the phenomenon of sex crimes against children in an early nineteenth-century jurisdiction, the Judicial District of Montreal. It begins by offering a summary background of the demographics of the city during a time of considerable flux, before situating laws against child sexual violence in the larger framework of sexual assault, and discussing how the twenty cases identified in this study (involving nineteen defendants) were categorized, prosecuted, and concluded. These twenty cases examine sexual crimes against females below the age of majority: unlawful carnal knowledge of a female under ten; unlawful carnal knowledge of a female under twelve; miscellaneous misdemeanour charges related to sexual assault; and abduction of a female under sixteen.[4] The manner in which some of these crimes intersect with the phenomenon of incest will also be explored. This study illustrates how litigants navigated a system involving sexual exploitation of females under age-based statutory regimens, within the confines of a gendered and patriarchal legal system. As shall be discussed, many of the factors that militated against successful prosecution of sexual assault in general were in full play here, in addition to other dynamics such as the nature of the crimes themselves and the impediments imposed by evidentiary requirements.

HISTORIOGRAPHY AND METHODOLOGY

Sexual assault, like many forms of interpersonal violence, was ubiquitous within the criminal annals of many jurisdictions, and the historiography is ample.[5] Canadian historiography is likewise abundant, albeit similarly focusing largely on the late nineteenth century and thereafter.[6] These works focus broadly on sexual violence, and offer valuable insight into these crimes and the social, cultural, and legal responses customary for those periods while sharing the commonality of marginalizing children. This is somewhat surprising, given that, as Constance Backhouse has noted, "child sexual abuse has always been a terrifying reality for Canadian children both male and female."[7] Exceptions to this include focused works by Louise Jackson[8] and Stephen Robertson,[9] and sections of others devoted either to children's or women's issues or sexual assault in general.[10]

In the Canadian context, examples are relatively few and those for Quebec rarer still: Bruce Curtis examined sexual exploitation of children through the lens of public education in Ontario from 1840–1907;[11] more on point is Terry Chapman's work on child sexual assault cases in western Canada at the turn of the twentieth century.[12] Sandy Ramos' study of sexual violence overlaps with the period and jurisdiction but emphasizes adult victims.[13] Several works also discuss incest within the Canadian family.[14] This study, then, adds to our knowledge of how these offences were handled in the first half of the nineteenth century, and in so doing seeks to address the fundamental question of how the dynamics and contours of these cases may have differed from sexual assault cases in general.

A word about methodology: this study depends on microhistories: an examination of individual cases found within period sources. These cases were not captured in published trial reports nor subject to appeal and can be reclaimed only from the judicial archives and contemporary newspapers. All extant relevant records for the Judicial District of Montreal for the years 1825–1850 were examined, a voluminous albeit spotty archive.[15] The sources suffer from obvious lacunae and identifying the true authorial voice in affidavits is complicated as these events were typically transcribed by jurists into formulaic legal language common to the period, with acts molded to fit within narrow legal categories, involving offences deemed too distasteful for discussion. The obstacles are even more acute when the victims were under the age of being able to swear an oath. One should also note that the courts were class driven and – more problematically here given that victims were female – gender driven.[16]

Newspapers are of limited utility in supplementing the sources, as social convention precluded covering these cases except in summary form and through language that was at best oblique; and frequent were references such as "the evidence was of course unfit for publication."[17] This held true in English as well as French language newspapers, just as it did in affidavits. While sexual assaults were frequently included in newspaper's sporadic coverage of criminal trials, they tended to receive less coverage than other crimes such as spousal murder and infanticide.[18] The tendency of editors to evade direct reference to the charge itself also impairs reclamation. For example, one would be forgiven for overlooking a "misdemeanor of a very grave character" in 1847 were it not clear from other sources the charge was for

assault of a child under twelve.[19] I have decided on balance to use the names of parties when they are known as they were often mentioned in newspaper articles.[20] Despite their limitations, newspapers allow us to reclaim information on court procedures, witnesses, dispositions of cases, and unconscious testimony about social norms and mores that might otherwise be lost.[21] Ultimately, however, what we are observing is penumbral: an outline of events receded in time and place, found in archives that survived, of complaints that were filed, of allegations of clandestine acts that were made public, and which resulted in some form of legal process. Much was obscured, lost, or never reported along the way, and for all of these reasons sources should be viewed as impressionistic and heuristic rather than as statistically reliable and empirical. One might hazard to say that what is disclosed is a mere fraction of the actual incidence.

Indeed, an obstacle to studying criminality in general is the innate difficulty of reconstructing furtive acts of social pathology.[22] Issues around family were not considered appropriate fodder for public discussion, and the sordidness of these offences militated against detailed publication.[23] Murder cases, in contrast, were often covered extensively, while sex-based crimes (such as infanticide or sexual assault) were sometimes covered if deemed particularly newsworthy but with prurient detail censored. Much more likely was the publication of the bare details of a defendant's name and the charge included in coverage of the most recent session of the criminal court. Child sexual assault, then, shared intersections with crimes such as infanticide, prostitution, and family violence; and in the case of incest, may well have shared commonalities with them all. These acts implicated crimes for which the underlying causes were not discussed; moreover, the victims as minors could not meaningfully act as agents for themselves within a gendered (and in this context one might add agist) legal system in which they were effectively voiceless; and as shall be discussed, many of the norms that were common to nineteenth-century rape prosecutions held true in the area of child sexual assault as well.

MONTREAL: DEMOGRAPHICS AND HISTORY

Montreal and Quebec went through myriad demographic and other changes during the first half of the nineteenth century. Quebec reached a population of 500,000 inhabitants by 1831, and doubled again

within the span of two decades.[24] In Montreal itself the changes were perhaps even more acute; a population of roughly 23,000 in 1825 had ballooned to more than 90,000 in the next forty years, making it the largest city in pre-Confederation Canada.[25] In 1825 one-third of Montreal's populace were English speaking, swelling to a short-lived majority.[26] It was also perhaps British North America's preeminent centre of commerce during this period, with an English-speaking elite at its apex.[27] After 1840 Montreal took on a different economic character, becoming a manufacturing, transportation, and commercial centre owing to a proliferation of canal, railroad, and other industrial projects.[28] As noted by Danielle Gavreau, "the city's economic base shifted from commercial capitalism focused on a few products (fur, wheat, wood) to industrial capitalism based on factories and workshops."[29] It remained a port city with a significant military garrison, and a constant flow of seasonal labourers, merchants, immigrants, and seamen. Worthy of note also is the political upheaval that convulsed Lower Canada, culminating in the Rebellions of 1837–38 and the unification of Upper and Lower Canada in 1840 into the Province of Canada.[30] The Rebellions, among their other effects, resulted in the temporary cessation of normal civilian courts, with irregular courts such as the Court of Oyer and Terminer and General Gaol Delivery supplementing regular courts once civilian order was re-established.[31]

Many urban Montrealers lived in crowded, spartan homes clustered around the city core, with everyday life revolving around communal spaces.[32] Children occupied those same spaces, weaving in and out of public arenas in conducting their daily lives, and sharing rooms with extended family and even strangers. Idleness was a luxury that the working classes could neither afford nor abide, reflected by the children caught up within these realities who were accosted while running errands or engaged in household tasks. Their lives played out against this backdrop of significant economic, political, social, and demographic flux.

CHILD SEXUAL ASSAULT LAW IN HISTORICAL CONTEXT

By the seventeenth century the common law settled on a definition of rape as "unlawful carnal knowledge of a woman committed by force against her will."[33] At this time, British North American criminal

law generally mirrored English law as it related to sexual assault, as both Upper and Lower Canada adopted English law as it existed on 17 September 1792.[34] The British Parliament passed the *Offences Against the Person Act* in 1828 which sought to clarify an evidentiary standard and facilitate convictions by providing that proof of penetration was sufficient to sustain the offence.[35] A reform statute some five years later abolished the benefit of clergy as a defence for sexual assault and reduced the number of capital felonies, although rape and carnal knowledge of a girl under the age of ten years remained capital.[36] This law was adopted verbatim in 1841 during the consolidation of the criminal laws for the united Province of Canada. Thus, rape remained a capital felony;[37] and proof of penetration was required for conviction.[38] The legislature of the Canadas modified the law in 1842 to include assault with attempt to commit rape, punishable by up to three years' incarceration in the provincial penitentiary or no more than two years in a common gaol or the House of Correction.[39] Only the crimes of assault with intent to commit rape or buggery were subject to this heightened sanction, the penalty for assault with intent to commit a felony being a maximum of two years' imprisonment.[40] In the event that a defendant was found not guilty of rape or assault with intent, he could be charged with misdemeanour assault and battery, punishable by fine and costs not to exceed £5 which could be summarily imposed by a justice of the peace.[41]

The legal regime governing sexual assaults against children shared similarities to the law against rape, but categorized the offence based on the victim's age. Minority, or infancy, was a fluid concept insofar as it was defined differently at varying times and by different legal systems; it was sufficiently complex a topic to justify works such as the *Treatise on the Law Relating to Infants*.[42] As MacPherson noted, in Lower Canada the age of majority was customarily set at twenty-one.[43] This mirrored the French *Civil Code*, which further limited males' right to contract marriage to a minimum of twenty-five years of age, and females to twenty-one.[44] English law likewise set the age of majority at twenty-one.[45] As such, minors were below twenty-one, but the age of consent was historically set at ten years – thus Blackstone could rail against the "abominable wickedness of carnally knowing or abusing any woman child under the age of ten years; in which case the consent or nonconsent is immaterial, as by reason of her tender years she is incapable of judgment and discretion."[46] The phrase "woman child," referring to females

below the age of consent, conflates two concepts considered binary in the modern period, capturing the duality of these females being (theoretically) legally protected by virtue of their youth whilst simultaneously being targets for sexual exploitation.

As mentioned, childhood was not yet conceived of as a distinct stage; by our period, a female child was classified as twelve years of age or younger, a threshold that would remain in place for decades.[47] Offences against females were therefore centred on the age of consent: sexual assault of females under ten was capital; while the same act against a female aged ten to twelve was a misdemeanour punishable by a discretionary term of imprisonment.[48] As reflected in Tables 9.1 and 9.2, variants of these offences were found within the archives, often more descriptive than legally accurate, including "unlawful carnal knowledge," "indecent assault," "ravishment," and "criminal intercourse," while usually specifying the victim's age. As also shall be discussed, another age-based offence was abduction, which shared commonalities with sexual assault but also encompassed older victims as well as a wider spectrum of acts. All were predicated on an ethos of patriarchy grounded in a centuries-old concept of the underage child as property of her father or guardian, rather than of the child as an intrinsic rights holder.

This essay focuses on female children, under twelve years of age for crimes of sexual assault, and under sixteen for abduction. However, sexual assault prosecutions in general for this period provides useful background. My provisional analysis of the judicial archives and secondary sources identifies more than 150 cases of sexual assault against adult women for the years 1825–1850; given lacunae in the sources, this number cannot be viewed as more than a heuristic indication of the relative rate of these crimes, but it is clear they were common. These crimes included rape or ravishment, and assault with intent; but also disparate offences such as prostitution, infanticide, buggery, and abduction.[49] The largest category of offences was assault with intent to ravish, comprising just under 50 per cent of the total – but this does not include the cases in which the charge of rape was reduced to a lesser charge during indictment, nor does it generally include indecent assault. This essay adheres to the legal categorization common to the period, such that while females aged twelve or older might have been described as "minors" in period sources they were treated under the legal regime governing sexual assault of adults, and therefore are not included.

CHILD SEXUAL ASSAULT

Late Georgian and early Victorian conceptions of childhood saw the child – the "little innocent" – as inherently pure and virtuous unless sullied by their environment.[50] This construct was itself created by the respectable classes, so environment here could include race, ethnicity, social class, and the like. But this paradigm of the innocent child lived uneasily alongside its darker parallel of the "erotic child." As stated by Louise Jackson, the "concept of sexual innocence, which was elevated in the Victorian 'cult of the little girl,' was clearly dependent on its opposite: the lurking shadow of experience and adult corruption."[51] The construct of childhood therefore encompassed the dichotomy of children both as sexual innocents and as objects of sexual desire, echoes of which can be found in the woman-child duality.

The 1860s to 1870s in the UK and US saw a dawning of public awareness of child sexual abuse, a "product of a coalition of interests between the social purity societies and the burgeoning child welfare movement."[52] By the late Victorian and early Edwardian period, there were well-organized and publicized movements agitating against issues such as child prostitution and sexual abuse, although discussions of incest remained largely taboo, and debate continued over the appropriate age of consent.[53] By the end of the century, the delineation of the female child firmly took on the mantle of being an allegory for purity and goodness, a stylized depiction of the innocent victim of crime appearing in Anglo-Canadian courts, literature, and elsewhere. Of course, Lady Justice herself ironically presided over a male-dominated system.[54]

By the dawning of the twentieth century, sexual abuse was seen as perhaps the most deviant and sinister form of child abuse.[55] The legal system of this period reflected the woman-child dyad, simultaneously creating legal offences to govern harm inflicted against children while also applying evidentiary standards and doctrines that precluded successful prosecution of many such crimes. The first half of the nineteenth century had few laws safeguarding children and no social welfare agencies tasked with their protection, and child victims surfaced relatively rarely in prosecutions. Children had some nascent ability to enforce rights relative to abusive parents or masters, but these protections were circumscribed and ordinarily required adults to activate legal process.[56] Culturally, children were often the subject of sexual predation for myriad reasons; for

example, in addition to the "erotic child" motif was the superstition that venereal disease could be cured through sexual congress with child virgins.[57] And if the legal system proved ill-suited to address sexual offences, predicated as it still was on private prosecution, this was even more so for crimes against children. Certainly Quebec society condemned child sexual assault in strident terms; malefactors were depicted as "wretches," "fiends," and "monsters," similarly to other jurisdictions such as late nineteenth-century Ontario.[58] This had the effect of highlighting society's condemnation while simultaneously marginalizing these crimes, permitting that they be "at the same time condemned and dismissed as an aberration."[59] Violence against children, in all its forms, tended to be situated within an "imaginary geography"[60] related to socio-economic class, race, place, and other externalities, rather than perceived as the "oppressive consequence of power and patriarchy" as Joan Sangster has noted.[61] Similarly to rape, there was a pronounced disconnect between what society and the law said about these acts, versus what the legal system actually punished.

SEXUAL ASSAULT OF A FEMALE CHILD UNDER TEN YEARS OF AGE

The most common category of child sexual assault prosecutions identified herein involved children under ten, with eight such cases being found. This is counterintuitive given the evidentiary obstacles impeding such cases, and the fact that capital crimes engendered greater reluctance on the part of juries to convict. Here two of eight cases resulted in conviction, one leading to a sentence of death (respited to a term of imprisonment) and the other to a one-year prison term for a lesser included offence. All others failed at some stage of the legal process or were frustrated by defendants eluding arrest, failing to appear in court, or fleeing.

The 1840 case of James Horn, a Chateauguay schoolmaster, resulted in his conviction for assault with intent (see third entry in Table 9.1). Newspapers revealed solely that the victim was an "interesting child of only six years of age,"[62] and that Horn was between forty and fifty and attended court on crutches.[63] The evidence against him was described as "most conclusive" and "brought the charge home to the prisoner." This assertion is buttressed by the jury returning a guilty verdict without deliberating. Newspapers predictably provided no allusion to the evidence except to note it was highly

Table 9.1 | Disposition of cases of sexual assault of a child under ten

Year/Defendant	Charge	Disposition	Sentence
1825 Jean Baptiste Labelle	Two counts unlawful carnal knowledge under age of five.	Fled jurisdiction.	N/A
1826 Joseph Massé	Rape of child under ten.	Acquitted.	N/A
1839 James Horn	Assault with intent to rape of child under ten.	Convicted.	One year's imprisonment.
1840 John Spooner	Rape/rape of child under nine.	Defendant defaulted.	N/A
1841 William Smout	Rape/assault with intent to carnally know a child under ten.	Acquitted. (Witnesses defaulted.)	N/A
1841 Andre Chevrier dit Lejeunesse	Carnally knowing a female child under ten.	No bill (no indictment).	N/A
1843 Étienne Carrier	Rape/violence against female child under ten.	Acquitted.	N/A
1848 Godfroy Céré	Rape/carnally knowing a child under ten.	Convicted.	Death (commuted to fourteen years' imprisonment).

inculpatory.[64] His file, however, consists of the affidavit filed by the girl's parents and extensive (albeit sometimes illegible) documents summarizing evidence, as well as a letter sent by her father to the attorney general with suggestions on how to present the case.[65] The parents alleged he "abuse[d] and assault[ed] their little daughter ...

with the intent of committing a Rape" and that he "was caught in the act by the said [parents] or was so taken before he had risen from the floor or had his clothes adjusted."[66] Ultimately Horn was sentenced to one year in prison.[67] It is likely that he was charged with the lesser offence due to penetration not being alleged.[68]

Only one case during this period was found to have resulted in conviction for the full offence: the trial of Godfroy Céré for having "carnally abused" a five-year-old girl (see eighth entry in Table 9.1). Little has survived save for a fragmentary deposition from the prosecutrix who alleged that in November 1847 the victim had entered her house about 6 a.m. and told her that Céré had "laid her in his bed ... taking off her clothes.[69] Described by one paper as a man of "about twenty-one or twenty-two years of age ... whose appearance was by no means unpossessing," he was convicted in February 1848.[70] As sentence of death was imposed, it was said he "raised his hands in agony, as though the terrible words ... had crushed his very soul."[71] The sentence was commuted to fourteen years in the provincial penitentiary, a common occurrence for this period.[72]

The difficulty in obtaining convictions in most cases can be illustrated by the 1843 case of Étienne Carrier.[73] Multiple affidavits including medical testimony outlined the case against him, alleging that he had assaulted the four-and-a-half-year-old granddaughter of a tavern keeper, Ambroise Peloquin. Carrier, a lodger, went downstairs to ask Mrs Peloquin if it was her granddaughter or grandson who would be sharing a room with him, and was told it was the former. If Carrier showed undue interest in the little girl, as it appears from the affidavit, it seemed not to have caused concern. About 3:30 a.m. another lodger heard the girl screaming.[74] Despite the testimony of the child's mother, attending physician, committing magistrate, and city registrar of births at trial, the defendant was acquitted. Newspapers highlighted (not altogether approvingly) the defence counsel's "ability and ingenuity"[75] and "eloquent and pathetic" jury summation.[76]

In contrast, prosecutions for crimes against children aged ten to twelve were fewer, as set out in Table 9.2. Perhaps the ages of the victims worked against them, as they were close enough to the age of consent to be seen as less childlike and parents declined to file complaints, yet they lacked the agency to agitate on their own behalf – the embodiment of the woman-child. The small number of these cases militates against generalizations, but it is worth noting that three of the four resulted in conviction, albeit two for a lesser offence. François

Table 9.2 | Sexual assaults against children between ten to twelve years of age

Year/Defendant	Charge	Disposition	Sentence
1829 François Reaume	Rape of a child under twelve.	Convicted of assault with intent.	One year in prison, and £25 surety for good conduct after release.
1842 Luke Bowen	Rape of a child under twelve.	Acquitted.	N/A
1847 François X. Brunelle	Rape/criminal intercourse with a child under twelve.	Convicted.	Three years' imprisonment.
1847 Michael McCluskey	Rape of a child over ten and under twelve years of age.	Convicted of assault.	Six months' hard labour.

Reaume, tried and convicted before the Court of Oyer and Terminer in August 1829, was sentenced to one year in prison coupled with surety for good behaviour in the amount of £25. He was charged with raping eleven-year-old Henriette Deparoit, but convicted of assault with intent.[77] Two other defendants were indicted on 1 February 1847, in unrelated proceedings: Michael McCluskey, a farm servant, was indicted for a "brutal assault" on an eleven year old;[78] while a true bill of indictment was found against François X. Brunelle.[79]

McCluskey was ultimately convicted of simple assault and sentenced to six months' imprisonment.[80] Brunelle suffered the most severe sentence of anyone convicted in this category, three years' imprisonment. The facts as known are that eleven-year-old Marie Belle had gone to take care of her neighbour's infant. According to her affidavit, Brunelle entered the house and accosted her but was rebuffed. He forced her upon the bed and covered her mouth with his hand before effecting his attack, threatening her life if she reported it. The neighbour returned and found Belle crying, and

although initially reluctant to reveal what transpired, Belle swore out a complaint.[81] Charged with "criminal intercourse with a child under twelve years of age," Brunelle was tried a year later and convicted.[82] None of the newspapers relayed details of the evidence presented at trial.[83]

The limitations of rape law vis-à-vis children are readily apparent when one contemplates that rape necessitated an application of force, as was the case with Brunelle. Anything less than an overt attempt fell short of rape or attempted rape, and it was uncertain what offence it could constitute. Acts that now are categorized as sexual molestation, or attempts that were frustrated by a child's youth, fell into a legal no-man's-land. Moreover, it had not yet been established that nonviolent acts were actually offences at all. As Christine Stansell posited, "men's erotic attention to girls ... was not a discrete and pathological phenomenon, but a practice that existed on the fringes of 'normal' male sexuality."[84] The notion of childhood remained in flux, bringing with it the troubling questions of what rights to append to children and the repercussions of so doing. It was not until late in the nineteenth century that a growing conception of childhood began to take hold, involving different stages of physical and other development distinct from adulthood, and with it an understanding that some actions involving children were wrongs even if not involving overt violence.[85] As the century gave way to the twentieth, and legal systems took cognizance of the fact that harms visited upon a child could implicate acts that fell short of rape, offences such as "carnal abuse of a child" were promulgated.[86] Legislation of this type did not yet exist for our period, however, sheltering these acts from prosecution.

Evidence that these acts did occur, and that at least some victims or guardians engaged the legal process (however unsuccessfully) may be found in the handful of easily-overlooked offences that have survived fitfully for the Court of Quarter Sessions, the lower court of general criminal jurisdiction. The fragmentary nature of the records does not allow for significant reconstruction; and some cases involving minors may not have been identified as such. Nonetheless they are illustrative of sexual exploitation of children not fitting cleanly within the aged-based categories of child sexual assault, shoehorned imperfectly under categories such as "assault and battery with intent to ravish" or "indecent assault," as set out in Table 9.3.

Table 9.3 | Misdemeanor sexual assaults against children

Year/Defendant	Charge	Disposition	Sentence
1826 Charles Cooper	Criminal and indecent assault upon a ten-year-old girl.	No record found.	No record found.
1833 Malcolm Fraser	Assault and battery with intent to ravish.	No record found.	No record found.
1840 Thomas Williamson	Assault with intent to ravish a six-year-old girl.	Dismissed.	N/A

One of the rare surviving affidavits by a child falls into this category, wherein Charles Cooper was accused of committing "criminal and indecent assaults" upon ten-year-old Mary Wright.[87] In her affidavit, she alleged that two months earlier, the defendant "threw her down on the ground, then lay down himself, and afterwards got up again, and took her to his house, where being alone, he took her on his knee, unbuttoned his small clothes and put his hands up her petticoats." She continued by saying that three weeks later she was sent by her mother to get apples from Cooper who "again treated her in the same manner until she cried."[88] Her mother's deposition complemented Mary's, alleging that she would not have sent her to Cooper's house had she known of the abuse; and that she understood that on the first occasion "Cooper assaulted and behaved very indecently to her putting his hand up her petticoats and taking down his own small clothes," while on the second he "made a similar indecent assault upon the said child exposing and feeling her private parts and his own and did not let her go until she cried."[89] It is evident these acts did not fit under the definition of sexual assault as it then existed, but equally so that both the victim and her mother viewed this as a violation the law could and should address. The allegations

against Malcolm Fraser, for "assault and [b]attery ... with intent to ravish" have survived only as a short defence affidavit by his father that attested to nothing more than his birthday.[90] Nothing further could be gleaned about this case; and the affidavit, while cryptic, likely was prompted by the doctrine that a male under fourteen was legally incapable of committing rape.[91] The inference that Malcolm Fraser was therefore not quite eleven and a half years old would presumably have been clear to jurists. The charge itself implied there was no penetration, another example of the difficulties attendant to prosecuting these cases.

The last of these implicated the defendant in two contemporaneous complaints emanating from the same incident, for assault with intent to ravish, as well as being idle and disorderly. Sworn by Francis C.F. Arnoldi, a justice of the peace himself, he alleged:

> [H]e hath every reason to believe that an individual servant to William Douglas of Montreal merchant whose name is unknown to the Deponent hath committed an assault upon one Fanny Arnoldi, the daughter of the deponent aged six years old with intent to ravish her ... that the said individual hath given his name in presence of the deponent as Thomas Williamson.[92]

The same day Arnoldi also swore out a complaint against Williamson charging him with being a "loose idle and disorderly person" who "hath so acted in openly and indecently exposing his person contrary to the provision of the ordinance in such case made and to the evil example of all others in like case offending." Here at least we know the outcome; the records of the Montreal Gaol reveal the complaint against him was dismissed after he was examined.[93] The absence of information on other cases is frequently indicative that the case did not proceed. In this instance, even a well-connected and respectable person such as Arnoldi, himself a jurist, was not able to move a prosecution forward, as the misogyny embedded in the system apparently triumphed over class.These three cases, fragmentary as they are, all involved parents as active participants in legal process – Cooper and Arnoldi as prosecutors; and Fraser as a parent intervening to forestall further legal proceedings. These cases highlight how singularly ill designed the law was to capture anything other than a narrow range of sexual acts perpetrated against children. Indeed, it is likely that jurists viewed such acts as more akin to

assault and battery. As William Oldnall Russell's treatise explicated, in the context of discussing the requirement of emission:

> [W]here the violence has proceeded to the extent of an actual penetration of the unhappy sufferer's body, an injury of the highest kind has been effected. The quick sense of honour, the pride of virtue, which nature, in order to render the sex amiable, has implanted in the female heart, is violated beyond redemption; and the injurious consequences to society are in every respect complete.[94]

This "sense of honour, the pride of virtue," et cetera might have been "violated beyond redemption," as Russell wrote, but none of that helped effect conviction, even less so where the act stopped short of penetration. This ambiguity as to whether these acts were non-sexual or indecent assaults helped doom them. If sexual offences, they did not meet the requisite evidentiary standards for the crime; if not, they likewise did not fit neatly under the rubric of assault and battery. These cases signify some halting attempts to incorporate these within existing categories of the criminal law, albeit in ways more descriptive than legally accurate, such as the 1832 complaint alleging "assault and battery and outrages committed upon the body of a woman." Amidst a sea of assault and battery complaints, this stands out for its reference to gross and illicit behaviour ("outrages") that neither rose to assault with intent, nor was captured within the taxonomy of criminal law. Suggesting both a physical and moral violation, it was ultimately charged as aggravated assault and battery.[95] But "aggravated" it could not be without the use of a weapon or showing of serious physical injury, rendering the charge legally futile.

A period example showing the conundrum posed by such acts occurred in 1850 involving a prosecution for assault with intent to commit a rape. It was alleged the defendant made "insulting propositions" before returning later the same night to fondle the prosecutrix while she was in bed. There was no claim of penetration nor of the attempt. The jury convicted him of simple assault, which the presiding judge took under advisement as "he did not know if the offence could be properly stiled (sic) an assault as ... the offence would partake more of the nature of a caress."[96] Acts such as these therefore straddled two categories, but were successful as neither, until the legal system evolved to recognize "indecent assaults" later in the century.[97]

LEGAL PROCESS, DYNAMICS, AND THEMES

Our ability to analyze these trials is limited by the many obstacles posed by the sources and processes themselves, but they suggest some conclusions about child sexual assault trials during this period. The definition of rape – unlawful carnal knowledge committed by force and against the victim's will – accorded jurists wide latitude in interpreting whether an offence had taken place, in this as in other jurisdictions.[98]

While it cannot be stated based on these sources whether there was an ideology of sex and gender specific to Montreal of this period, conviction in rape cases was predicated on a much higher evidentiary threshold than the law required.[99] Since there were widely-accepted standards as to the level of resistance expected, for example, the question of consent took on heightened importance and centred on the victim's credibility.[100] Indeed, victims were responsible for driving the administration of justice, as cases were initiated by a prosecutrix or other individual swearing out complaints and initiating and paying for legal process, which, as noted earlier, was particularly burdensome for children.[101] Embedded in this are three distinct points that must be highlighted with regard to the child victim: firstly, while women were expected to have shown fierce resistance before being overcome, this would have been nonsensical in most cases involving children. Secondly, the issue of credibility was met with legal ambivalence. On the one hand, no evidence was found that children's precociousness was used against them nor were there allegations they had been willing participants in the sexual bartering that surfaced in many defences to allegations of sexual assault. Moreover, consent could not be at issue; in fact, these offences were precursors to the crime of statutory rape.[102] On the other hand, children's credibility was implicitly suspect due to their age, which disqualified many from giving sworn evidence and required corroborative testimony from other witnesses, and there is evidence that the credibility of relatives impacted the outcome as any hint of "ill repute" sabotaged successful prosecution. Lastly, children could not navigate the legal system themselves, even were they aware of it; they required an adult to initiate and finance the filing of a case.

The strong evidentiary hurdles that militated against successful sexual assault prosecutions in general were even more heightened here. If proof of penetration was required – and in its absence even the most egregious violations fell short – what could this have meant for the youngest victims? Their physical immaturity could stymie completion of the assault, rendering it legally a mere attempt no matter how traumatizing or injurious it might have been. Such was the case with François Reaume's eleven-year-old victim.[103] So too with John Spooner, charged with assaulting a nine-year-old girl in 1840. Her father, a house joiner, accused Spooner of "intent to commit a rape and did with force lay hold of her ... and her abuse and evilly entreat in a most shameful manner," but "owing to her tender years he could not succeed in having carnal knowledge."[104] Proof of injury neither obviated the need for a showing that the act was completed, nor was sufficiently inculpatory to generally support conviction on the full offence. And, as shown, molestation did not fit within these definitions at all.

With respect to the victims, few left behind written evidence. Period affidavits often reflected the magistrate's transposition of allegations into formulaic legalese, and this could only have been even more probable when child victims were involved.[105] It is unlikely that eleven-year-old Malonie Poutré stated that she had been "violently and feloniously assaulted by the same Luke Bowen ... [who] with force and arms against the will of the said Malonie Poutré then and there feloniously did ravish and carnally know"; this reflects a synthesis of her allegations into legal jargon that would have been outside the commonplace usage of a nonjurist, let alone an eleven year old.[106] Contrast this with nine-year-old Julia Dunvar's complaint, which alleged that her assailant had "pulled her down into his lap and pulled out all that he had and put it between her legs ... before he began to do it, he took spittle from his mouth with his finger and put it upon her between her legs."[107] Dunvar's affidavit seemingly captured her account verbatim; while Poutré's voice was entirely erased. Also common was opaque verbiage that might (but probably did not) reflect the complainant's words such as "[he] executed his design in spite of all my resistance."[108]

If the complainant was rendered largely mute, forensic medical evidence could be expected to play an important role. Children's allegations required corroboration seldom available from eyewitnesses, and so medical testimony was crucial.[109] While pediatric medicine was yet to emerge as a distinct field, treatises on medical jurisprudence provided information on the evidence useful in prosecuting sexual assault, including that of children.[110] The semiology

of children's bodies provides unsettling proof of the physical trauma they endured as well as delineations of the type of evidence offered at trial, such as the four-year-old twins "infected ... with the Venereal disease" in 1825. This case could have been instructive insofar as how this might have been used at trial but the accused unhelpfully fled prior to arrest.[111] Newspapers alluded to such evidence; as delicately noted in one newspaper, "certain parts of the child had been injured by the prisoner."[112] Allegations in affidavits could be more explicit, including appalling disclosures by one mother who found the "parts" of her four-and-a-half-year-old daughter "to be much inflamed the blood flowing abundantly," with her bed and clothes blood soaked.[113] This case file includes affidavits from surgeons attesting to "evident marks of injury," including that she was found "bleeding profusely from the vagina, the perineum was lacerated and the membrane torn, [and] the hymen had also been lacerated."[114] Tried on the "horrible and revolting charge," with several witnesses appearing for the Crown and damning medical evidence, the defendant was nonetheless acquitted.[115] The verdict resulted in a commotion from the audience.[116]

The file for François Reaume has not survived but offers the only pardon application found for such a case. In it evidence of injury was referenced although almost in passing. Reaume's (unsuccessful) petition alleged that he "has a wife of a very sickly constitution and two helpless children which are now totaly (sic) distressed, and Depends only upon your Excellency's Petitioner to Suport (sic) them" and that he "Humbly beg(s) leave to hope as it is the first time he had fell (sic) in the hands of Justice that your Excellency may be most Graciously pleased to take his unfortunate Case into your Excellency's most well known human(e) consideration, and to grant him a Pardon."[117] A letter written by Chief Justice James Reid and Justice George Pyke, to the administrator of the Province of Lower Canada, opposed his request for clemency as the "evidence at his Trial was one of a highly aggravated nature" in which he followed the victim from her father's house "where he had been hospitably received,"and "dragging her with violence into the wood where her youth alone prevented the perpetration of the crime he had meditated, though not without injuring the Child in other respects."[118] The emphasis on Reaume's predatory conduct towards a neighbour, the act of forcibly removing and restraining the victim, and the nature of her injuries were all factors emphasized by the judges in their condemnation of this

crime as "highly aggravated," and no doubt had swayed the jury as well. The role of medical evidence in these cases therefore appears to be simultaneously crucially important and yet often legally irrelevant. While it may have offered compelling indicia of force, strictly speaking that was unnecessary as victims were below the age of consent; if inculpatory in demonstrating an assault had taken place, it nevertheless could not corroborate that it had been committed by a specific assailant.[119] The inability of medical testimony to substantiate the complainant's evidence by itself – or to take its place, when the complainant's youth meant they could not be sworn – meant this evidence was routinely presented to, and just as routinely disregarded by, the jurors who heard it. Cases such as Reaume's remained the exception.

Indeed, many of the victims were very young, and these offences clearly pedophilic. Witness the ages of the alleged victims of Jean Baptiste Labelle the younger (both four years old), Étienne Carrier (four and a half), Geoffrey Céré (five), and James Horn and Thomas Williamson (six).[120] These cases also indicate similar clustering around the upper limits of the band covered by these offences, such as the cases of John Spooner (nine), Charles Cooper (ten), and François Brunelle, François Reaume, and Michael McCluskey (eleven). This latter group, by virtue of the victims' ages, generally fits within the misdemeanour offence by definition; but is also suggestive that assailants viewed these victims as the woman-child to whom they had the right of sexual access: "[y]ou must lie with me," said Brunelle to eleven-year-old Marie Belle, prior to forcing himself on her.[121]

The victims' youth had many repercussions here. For the younger victims, as noted, it might prevent assailants from consummating the offence at all; but in general, it made children easy prey. As also noted, it meant that victims were frequently disqualified from having their testimony taken down as sworn statements. Little can be said about how children's testimony in these cases was received, except to note that there is no indication their age could do anything other than hamper prosecution.[122] This disability, coupled with the lack of corroborative testimony, would have doomed many cases at the onset. And of course fear or the sexual shame experienced by these children also made some reluctant to disclose the abuse; as Mary Wright attested, "[t]hat being then afraid of the said [defendant] she told her mother of what had happened as indeed [she] should have done from the beginning had she not been ashamed."[123] Threats were sometimes

explicit; Marie Belle's attacker vowed that "if I told or disclosed the deed he would cut my guts out with his knife [while] at the same time showing me the knife."[124] The agency shown by some children in swearing out affidavits after the traumatic events they endured, even after threats such as these, is remarkable. Other children, particularly the youngest, would not have understood what had happened to them, or been too scared to confide in their parents.[125]

Cases that survived indictment tended to fail for the usual litany of reasons common to sexual assault cases. These included the failure of parties to appear, such as in an 1842 case for "assault with intent carnally to know and abuse a woman child under ten years of age" in which no Crown witnesses appeared.[126] This was not uncommon, as parties might be expected to appear in court repeatedly, unaware of when their case would actually be heard, or have informally settled the case, among other explanations.[127] As always, some defendants opted to abscond prior to their arrest or defaulted on bail.[128]

Given the attendant difficulties in securing a conviction, one may well wonder why parents pursued legal redress at all. It is possible that some naively felt that justice was surely to be had, but this alone could not account for the number of cases. The involvement of women from the lower classes in the legal system, as litigants, prosecutors (and defendants), renders it unlikely to suppose that the parents in these stories were not aware of the hurdles they faced.[129] Why did they, then, believe it worthwhile to engage with the criminal justice system? Were they motivated by a desire for accountability, with the hope that the public nature of these cases would tar the defendants regardless of the formal outcome? Or did they hope the process itself would restore or preserve the respectability of the child victim and her family? Did they seek vindication, settlement from the defendant, or some form of acknowledgment?[130] While these cases may have tarnished defendants' reputations, given social mores of the period, it seems just as likely that these children would be seen as "damaged goods" regardless of the outcome of such cases. These factors suggest a complex reality underlying the motivations for such cases.

Both Anglo-Canadians and French-Canadians engaged the legal system here. French-Canadian names are well represented and constitute a bare majority of ten out of nineteen defendants, with the rest identified as Anglo-Canadian. None of the parties were identified as Indigenous or Afro-Canadian.[131] What is striking amongst this demographic is that victim-perpetrators fell on clear ethnic

lines: Anglo-Canadians preyed on Anglo-Canadian children, and French-Canadians preyed on French-Canadian children. The exception, Luke Bowen's assault in 1842, appeared to be an opportunistic one.[132] This is consistent with the view that adults targeted children within their communities and social circles, which mirrored linguistic and ethnic lines.

Regardless of their ethnicity, the reputation of the complainant was all-important as a determinant.[133] As Philip Girard observed, "Defense counsel ... employed a range of techniques to weaken or gainsay the prosecution evidence ... includ[ing] putting the victim on trial in sexual assault cases."[134] Impugning a victim's reputation remained a stratagem as common as it was effective. For the youngest victims, it was their parents whose reputation was targeted, although older children could be as well. A case involving the rape of a twelve-year-old girl in 1842 was described as "fully made out on the part of the Crown" but failed as defence counsel showed the "complainant was a person of bad character and that her mother and elder sister, who ... were the only essential witnesses, were persons of loose character, and as such could not be believed on oath." The jury returned a not guilty verdict without deliberating.[135]

Indeed, parents and guardians played an outsized role in these cases; no doubt they decided in many instances whether to pursue legal proceedings at all, but they were always central figures. Most typically it was one parent (or both jointly) who swore out a complaint, often supplemented by testimony from an attending physician, as well as other supporting witnesses if available.[136] This likely provides us with the evidentiary contours common to most prosecutions, as illustrated by a rare account detailing a trial in which the solicitor general "called the mother of the child, the physician, committing Magistrate, [and] the Registrar of [B]irths, who deposed to the facts charged in the indictment."[137] We can infer that the mother was called to testify to the circumstances surrounding the assault; the physician to the medical evidence; the committing magistrate to the circumstances and timing with respect to the charges being filed; and the registrar of births to the child's age and parentage. This array of testimony was likely the most robust that a typical case could realistically muster, and it was not often successful.

It is true that defendants could incriminate themselves, and sporadically did – although not at trial as they could not testify – but this rarely had any effect. Judges held an institutionalized mistrust of

confessions and excluded those found to have been made in the hope of leniency. This phenomenon was reflected in other criminal cases, including infanticide and spousal murder, and also here.[138] Joseph Massé "[o]on the road to Chambly ... after he was arrested, made several confessions, but as they appeared to be extorted by a hope of freedom, the Court did not permit them to go before the Jury."[139] This custom was derided by some contemporary critics. As one editorial posited under the heading of "Suppression of Truth and Exclusion of Evidence," when a prisoner was examined by a magistrate "the first care of his worship is to caution the man to say nothing that may betray him, as if the great business of justice was to keep the truth from too prompt and distinct a discovery." Moreover, police "are looked coldly on or rebuked if they tender any evidence of confession, though not extorted, but yielded in the confusion of guilt or in the despair of concealment. They profit by these lessons, and become the protectors of criminals." The editor went on to reference a recent case:

> A miscreant forcibly violated an infant under five years of age, the child of his mistress. When apprehended he began his confession to the officer, who stopped him short, desiring him to say nothing to commit himself, just as any magistrate would have done. The only evidence for the conviction of the wretch was thus excluded. The horribly injured child was under the age for an oath, and her testimony could therefore not be had, and there was no other, the lips of the criminal having been closed by the servant of justice when about to reveal the particulars of his detestable crime.

As the editor concluded, the suspect "is therefore acquitted, may repeat the same part to-morrow, and others may imitate him, and the police fulfil the office of the criminal's remembrancer."[140] If the child victim could not testify, and there were no other eyewitnesses, even the defendant's own confession would not prove inculpatory.

These cases share the commonality of male predatory conduct against the children of neighbours and friends. Children lived in close proximity to adults, in crowded inner-city tenements, barracks, boarding houses, and homes. They traveled freely to perform errands, were left at home by parents, and were targeted whilst doing the most banal activities, unsupervised, in the most mundane of places in which they lived and worked.[141] These acts encompassed a range

of activities, although seemingly not playing.[142] They were assaulted in their homes as parents laboured outside, as George Burhart was alleged to have done.[143] Children fell victim to lodgers in taverns and inns owned by their parents as they slept.[144] They were attacked in neighbour's homes whilst tending infants.[145] Even children living in crowded army barracks were vulnerable, as evidenced by Mary Anne Anderson, the young daughter of a colour serjeant in Her Majesty's Sixty-Seventh Regiment of Foot. Following a forty-five-minute absence on Good Friday, the parents returned to find a private in the regiment lying upon their daughter: her "cloathes (sic) were raised above her knees and she was struggling with him"; as they entered the room the defendant ran past them "in a stooping position." Mary Anne was at first uncooperative in detailing what had occurred until her father threatened to flog her.[146]

If children could be easily preyed upon in cities, this was no less true in the relative privacy afforded by rural locales. Children were waylaid in woods where they gathered berries and flowers, or retrieved cows for milking.[147] There was no evidence that these perpetrators offered gifts or other inducements to lure children, but rather pursued children who were already known to them.[148] This included close relatives, although this appeared much less frequent. A rare example found in print was published under the tagline "PUNISHMENT OF DEATH," recounting how a labourer was sentenced to be hanged "for violating the person of his own daughter, aged ten years and a half." At his sentencing the presiding judge "intimated to the culprit that the circumstances of his crime would render the Executive deaf to any application for a mitigation of his punishment." The editor went on to describe this crime as having "a character of unexampled demoralization. It is one of those, almost unheard of in the annals of humanity."[149] While the tone of abhorrence was unequivocal – to which the incestuous nature of the crime no doubt contributed – power dynamics within families meant that the force used in many cases of incest was more likely psychosocial rather than physical.[150] Daughters were often reluctant to allege, and families equally reluctant to disclose or acknowledge, such abuse.[151] Incest was also an ecclesiastical rather than statutory offence.[152] As such, these cases were even less likely to surface within the records, and realistically were only prosecutable if they could be subsumed under the rubric of sexual assault. Shadow evidence of these acts did emerge, most often in the context of domestic violence or child

abuse, but these were uncommon.[153] The sanctity of family privacy, the dynamics of the acts themselves, the revulsion with which they were viewed, and the fact that an overt use of force was required all militated against prosecution; hence it was only rarely these acts were captured within the archives. One such case was found here, the 1826 trial of Joseph Massé for assaulting his niece. Described as a crime of the "most flagrant nature ... attended with circumstances the most shocking by a married man," a newspaper account documented that "the child's mother and the wife of the prisoner went in search of her, and found her lying on the floor of the cellar [of her uncle's house], covered with blood and quite intoxicated."[154]

This theme of intoxication was recurrent. Alcohol was used to make children pliant, as was the case with Joseph Massé; but more often the assailant himself was inebriated, as was François Brunelle. The interplay between alcoholism and violence was legally conflicted, often mitigating the actions of the assailant and enhancing the culpability of the victim. James Horn's file contains a letter from the victim's father to the attorney general which identifies a witness to establish that the "prisoner ... was sensible and not intoxicated," while the magistrate's notes on witness testimony include reference to the defendant as a "dangerous and dissipated person" who was "so drunk he could not get to the door"; and ends with a query: "[given] the characteristic of men never to allow they are drunk; how given it that the schoolmaster admits it?"[155] The implication here was that Horn would only admit to drunkenness if it was exculpatory. It was not always, of course, and a claim of inebriation did not accrue to Reaume's benefit in his 1829 bid for clemency referenced earlier. The judges who had presided over his trial were pointed in their opposition to his petition: "We can readily believe such brutal conduct may have been the effect of Liquor, but we cannot on that account feel justified in recommending the prisoner to the clemency of His Excellency."[156] Alcohol played its part in the sexual assault of children, just as it did in cases of domestic violence and homicides.[157]

THE OFFENCE OF ABDUCTION

However uneasy the fit between child sexual abuse and the legal regime governing it, there were other offences that implicated similar crimes. One such offence, abduction, is a logical adjunct to child sexual assault despite not always implicating rape, and being aimed

at females under the age of sixteen rather than under twelve. Abduction was defined as the "unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution."[158] Included in this was therefore taking or detaining for purposes of ravishment. Russell's treatise discussed abduction in the section immediately following rape, unlawful carnal knowledge of female children, and sodomy.[159] Its relationship to other acts can be discerned by the title of his chapter: "Of the forcible abduction and unlawful taking away of females; and of clandestine marriages." It also had a complex relationship with property: the male guardian's property rights in their child or ward, certainly; but also protection of property rights held by women who were heirs apparent or held property of their own. Some of these cases have few surviving documents yet allow us to see the contours of these acts and how they intersected with sexual assault. All shared the commonality of being applications of paternalistic laws designed to govern unmarried women.

While forcible removal of a female could implicate abduction as well as sexual assault, some cases involved neither. Complaints of abduction could include elopements of willing partners in the face of disapproving fathers in his role as paterfamilias.[160] Such was the prosecution of Joseph Guitard for having "forcibly and feloniously abducted and stolen an heiress" of sixteen years and "of having afterwards married and defiled her and ... having unlawfully and feloniously conveyed and taken [her] away from the care and possession of her parents and against their will and consent."[161] The property aspect of the offence remains palpable: the "heiress" removed from the "care and possession of her parents." Other cases encompass what is now referred to as abduction by a non-custodial parent.[162]

More commonly and relevantly, however, abduction involved sex-based crimes. The close interplay between the two could result in occasional confusion, as illustrated by a newspaper that identified one rape prosecution in 1843 as "abduction" when the allegations in the file and other newspapers did not bear this out.[163] However, as shown in table 9.4, four of the six cases involving abduction clearly evince the symbiotic relationship between these crimes. The prosecution of Joseph Latulip in 1840 is one such case. The complainant, Julie Carpentier, attested she was in the woods with her mother and two young men when she was accosted by the defendant. She spurned his advances; he then seized her and carried her to a wagon, driving her

(along with his brother) to their family's house. Alerted to the events, Carpentier's father went to a local justice of the peace, who together secured her release. The next day Latulip returned and told her father "that if he did not make deponent get up out of bead (sic) that he ... would blow out the candle and brake (sic) what there was in the house and drag deponent out of bead (sic) dressed or not dressed." She arose, after which he "made a spring at her ... and she sliped (sic) through his hands ... and was obliged to make her escape through the window."[164] These facts leave little doubt of the culprit's intent.

Examples were also found involving procuring of women for prostitution. Two of these cases appear related: few details are known about Zoe Seguin, the "old hag" and only female defendant found in this study, other than she failed to appear in court to answer to the charge of abduction in her role as a procuress of a young woman to a Montreal brothel.[165] She is, however, almost certainly one of the parties alleged to have been spirited away by François Xavier Beaudry as a means of stymying his prosecution. Beaudry was implicated in multiple offences related to abduction, being indicted in 1847 for two counts of obstructing justice through "abduction of witnesses" (curiously referring to abduction here not in the strict legal sense) prior to his eventual prosecution two years later.[166] As documented in one account, this "outrage" of abducting a young girl, the "daughter of a poor habitant at Boucherville, under circumstances which excited a strong feeling at the time (now some two years ago)" had also resulted in two other indictments against the defendant "for keeping back witnesses who had important evidence to give in the case." The paper went on to explain that Beaudry is "a man possessed of considerable property, and the crown officers had reason to suppose that unfair means had been used to get the witnesses out of the way," as an explanation for the lengthy delay in bringing him to justice.[167] As further detailed, the "principal witness now, was the keeper of a house of ill-fame, to which the little girl was conveyed, after she was brought to Montreal by a horrible old hag, who played the part of procuress, and who is one of the witnesses not forthcoming."[168] The testimony of this witness and that of her father led the jury to convict. Beaudry was sentenced to six months' incarceration, coupled with a hefty fine of £500; this amount doubtlessly influenced both by his being affluent as well as the pecuniary motive that drove the crime.[169] Thus we have here what looks very much like a mid-nineteenth-century human trafficking ring.

Table 9.4 | Abduction prosecutions

Year/Defendant	Charge	Disposition	Sentence
1830 Joseph Guitard	Abduction/rape.*	Arrested and bailed; writ of habeas corpus.	No record found.
1840 Joseph Latulip	Assault with intent to ravish/ abduction.	No record found.	No record found.
1841 Emile Blais	Abduction.	Writ of habeas corpus.	No record found.
1846 Zoe Seguin	Abduction/ seduction.	Defendant defaulted.	N/A
1849 François X. Beaudry	Abduction.	Convicted.	Six months' imprisonment, £500 fine.
1850 Michael Coleman	Abduction.	Convicted.	Three years' imprisonment.

*Appears to have been a case of elopement.

The archives also disclose an abduction case that raised a novel legal question: could a defendant be charged with abduction if he was also the victim's guardian? The 1850 case of Michael Coleman raised this question, as he was stepfather to Anne Murray, the young woman he was accused of having abducted. Apprehended while trying to take her across the US border, Coleman was tried for abduction of a girl under sixteen years of age. While the file has not survived, his case is amply documented in the period press, disclosing among other salient facts that he paid an acquaintance to help lure his stepdaughter away from home. Although calling no witnesses (common for defendants in sex-based crimes for this period), his attorneys offered a spirited defence, successfully disqualifying his wife from testifying based on

spousal privilege but arguing unsuccessfully that the victim's age was not satisfactorily established. At trial there was ample evidence of his misdeeds, including testimony from six witnesses – unusually, this included testimony from Ann herself.

The main defence strategy was to argue that under the civil law the accused was vested with guardianship of the girl and accordingly could not be her abductor. The court reserved judgment on this novel point of law, ultimately holding that this would properly be a "motion to arrest the verdict" should he be convicted, which unhappily for Coleman he was after only five minutes' deliberation.[170] Two weeks later, the court reconvened to rule on the motion. Justice Rolland emphasized that Ann's stepfather had taken her "from the possession and custody" of her mother while the mother was "under the marital puissance [authority] of her husband." The mother had guardianship prior to the marriage under "the law of nature," and the "subsequent marriage did not take it altogether from her." Furthermore, he had not been formally appointed as guardian. The mother then held the right to guardianship conjointly with him. "The right of protutor with which he was invested by his acquisition of the *puissance maritale* did not entirely destroy the right of the mother; it rather invested the stepfather with the duties and responsibilities, then with the rights and powers of the *tutelle* [guardian]." Under UK law, which the court stated was much more expansive in terms of the husband's authority, the mother still held power of guardianship. As the court concluded, "the *puissance* of the husband, then, being greater than in Canada, who shall say that the mother, who is under that stricter system, even, left this power, has not with us this power of protection over the morals and safety of her child, in the absence of the father. If so, this would be most especially her right when the father, being absent, is the person endeavouring to debauch her daughter." He may have been her guardian, the court ruled, but that was no defence when he held it jointly with the girl's mother, and moreover was the person committing the crime – the word "debauch" making clear to us the intent behind the act. Accordingly, the court denied the motion to arrest the verdict.[171] Coleman was sentenced to three years in the provincial penitentiary.[172]

Abduction cases are therefore a logical adjunct to child sexual abuse cases, although commonly involving the woman-child over the age of twelve, and involving a range of acts. The interplay between sexual assault and abduction is made manifest by these examples, involving as they do kidnapping, forcible concubinage or prostitution, and the like.

CONCLUSION

Conceptions of childhood were slow to change, and it would not be until the late nineteenth century ebbed into the twentieth that the notion of childhood, as a distinct psychosocial and physical stage of development, took root. Legal adaptation was even slower, and children were accorded legal rights haltingly as the century progressed.

Many factors militated against child abuse being successfully prosecuted – the obstacles common to prosecution of sexual assault in general, coupled with the socio-legal dynamics unique to those below the age of majority. If a system of private prosecution founded on masculine authority and privilege was ill designed to provide redress for victims of sexual assault, as it was, this was more markedly so for its youngest victims. Without child victim advocates and social welfare agencies, an adult guardian's initiation of legal proceeding was a sine qua non for such cases, but even when cases were filed young children could not testify and often could not swear out depositions. Only older children had any degree of agency and were accorded a voice in the process, although not at the trial itself. Medical evidence was of little assistance, as it generally could not be tied to a specific defendant; and the panoply of reasons that diverted sexual assault prosecutions were often in full play here as well. The young women here were legally protected only insofar as their minority status was reflected in the categories of sexual assault the law recognized; otherwise age was an impediment. They were too young to be believed in court, but not too young to be shielded from men's sexual advances. The historical record also indicates the woman-child would not have fared much better as an adult victim-witness in period courts. Despite these age-based crimes, many manifestations of child sexual abuse did not comport with any category of offence at all. With its emphasis on penetrative acts, assault that were not fully consummated – common with young victims – could at best be prosecuted as attempts. Children were physically violated, traumatized, even grievously injured, but

under the gendered legal system of the period, only a very few could be deemed to have been legally violated. In the absence of statutory provisions covering indecent assaults, acts of molestation did not fit within any cognizable category, seen more as caresses than crimes. For the woman-child, neither the law as written nor as applied provided justice for more than a small minority of victims.

NOTES

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1 *Montreal Gazette*, 21 August 1826 (citing *Montreal Herald*).

2 See, e.g., Constance Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900–1975* (Toronto: The Osgoode Society for Canadian Legal History, 2008), 1 and generally.

3 For discussion of how the legal system fitfully prosecuted cases of child abuse and neglect for this period, see Ian C. Pilarczyk, "'To Shudder at the Bare Recital of those Acts': Child Abuse, Family, and Montreal Courts in the Early Nineteenth Century," in *Essays in the History of Canadian Law, Volume XI: Quebec and the Canadas*, edited by G. Blaine Baker and Donald Fyson (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2013), 370–426.

4 This study therefore excludes sexual assaults against females over the age of twelve; assaults of males, including children; and the wider range of sexual-based offences that included seduction, buggery, infanticide, bigamy, and the like.

5 For representative examples for the US and UK see, e.g., Marybeth Hamilton Arnold, "'The Life of a Citizen in the Hands of a Woman': Sexual Assault in New York City, 1790–1820, in *Passion and Power: Sexuality in History*, edited by Kathy Peiss and Christine Simmons (Philadelphia: Temple University Press, 1989), 35–56; Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England, 1770–1845* (London: Pandora, 1987); Shani D'Cruze, *Crimes of Outrage: Sex, Violence, and Victorian Working Women* (Southern Illinois University Press: DeKalb, 1998); Merrill D. Smith, ed., *Sex Without Consent: Rape and Sexual Coercion in America* (New York University Press: NY, 2001).

6 These works include Constance B. Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900–1975* (Toronto: The Osgoode Society for Canadian Legal History, 2008); Backhouse, "The Sayer Street Outrage:

Gang Rape and Male Law in 19th Century Toronto," in *Glimpses of Canadian Legal History*, edited by Dale Gibson and Wesley Pue (Winnipeg: Legal Research Institute, University of Manitoba, 1991), 47; Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," in *Essays in the History of Canadian Law, Volume II*, edited by D.H. Flaherty (Toronto: University of Toronto Press, 1983), 200; Backhouse, "Rape," in *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: The Osgoode Society by Women's Press, 1991), 81; Terry L. Chapman, "Sex Crimes in the West, 1890–1920, An Overview," in *Papers from the Canadian Law in History Conference, Volume II* (Ottawa: Carleton University, 1987); Patrick J. Connor, "'The Law Should Be Her Protector': The Criminal Prosecution of Rape in Upper Canada, 1791–1850," in *Sex without Consent: Rape and Sexual Coercion in America*, edited by Merril D. Smith (New York: New York University Press, 2001), 103; Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880–1929* (Chicago: University of Chicago Press, 1993); Leslie Erickson, *Westward Bound: Sex, Violence, the Law and the Making of a Settler Society* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2011); Dubinsky and Adam Givertiz, "'It Was Only a Matter of Passion': Masculinity and Sexual Danger," in *Gendered Pasts; Historical Essays in Feminity and Masculinity in Canada*, edited by Kathryn McPherson et al. (Toronto: University of Toronto Press, 2003), 65–79; Dubinsky, "Sex and Shame: Some Thoughts on the Social and Historical Meaning of Rape," in *Rethinking Canada: The Promise of Women's History*, edited by Veronica Strong-Broy and Anita Clair Fellman (Toronto: Oxford University Press, 1997), 171–81 (focusing on rural and northern Ontario, 1880–1930); Ruth A. Olson, "Rape: An 'Un-Victorian' Aspect of Life in Upper Canada," *Ontario History* 68, no. 2 (June 1976): 75–9; Carolyn Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880–1930," in *Essays in the History of Canadian Law, Volume V*, edited by J. Phillips, T. Loo, and S. Lewthwaite (Toronto: University of Toronto Press, 1994), 207.

7 Backhouse, *Carnal Crimes*, 166. This was likewise true of prosecutions for such crimes. Ibid., 168.

8 Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London; New York: Routledge, 2000).

9 Stephen Robertson, *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill; London: The University of North Carolina Press, 2005).

10 See, e.g., Nancy Hathaway Steinburg, *Children and the Criminal Law in Connecticut, 1635–1855: Changing Perceptions of Childhood* (London; New York: Routledge, 2005), 161–82; Carol-Ann Hooper, "Child Sexual Abuse and the Regulation of Women: Variations on a Theme," in *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, edited by Carol Smart (London; New York: Routledge, 1992), 53–77.

11 Bruce Curtis, "'Illicit' Sexuality and Public Education in Ontario, 1840–1907," *Historical Studies in Education* 1, no. 1 (Spring 1989): 73–94.

12 Terry L. Chapman, "'Inquiring Minds Want to Know': The Handling of Children in Sex Assault Cases in the Canadian West, 1890–1920," in *Dimensions of Childhood, Essays on the History of Children and Youth in Canada*, edited by Russell Smandych et al. (Winnipeg: Legal Research Institute of the University of Manitoba, 1991), 183–204; Joan Sangster, "Masking and Unmasking the Sexual Abuse of Children: Perceptions of Violence Against Children in 'The Badlands' of Ontario, 1916–1930," *Journal of Family History* 25, no. 4 (October 2000): 504–26.

13 Sandy Ramos, "'A Most Detestable Crime': Gender Identities and Sexual Violence in the District of Montreal, 1803–1843," *Journal of the Canadian Historical Association* 12, no. 1 (2001): 27–48. Tamara Myers' work studies the construction of female delinquency and intersects with some of these issues although for a later period. See, e.g., Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869–1945* (Toronto: University of Toronto Press, 2006).

14 See, e.g., Marie-Aimèe Cliché, "Un secret bien gardé: l'inceste dans la société traditionelle Québécoise, 1858-1938," *Revue d'histoire de l'Amérique française* 50, no. 2 (Fall 1996): 201–26; Dorothy E. Chunn, "Secrets and Lies: The Criminalization of Incest and the (Re)formation of the 'Private' in British Columbia, 1890-1940" in *Regulating Lives: Historical Essays on the State, Society, the Individual and the Law*, edited by John McLaren, Robert Menzies, and Dorothy E. Chunn (Vancouver: UBC Press, 2002), 120; Joan Sangster, "Masking and Unmasking the Sexual Abuse of Children: Perceptions of Violence against Children in the Badlands of Ontario, 1916–30," *Journal of Family History* 25.4, no. 2 (2000): 504–26.

15 The records include: Records of the Montreal Gaol [MG]; Registers [KB(R)] and Files [KB(F)] of the Court of King's/Queen's Bench; and Registers [QS(R)] and Files [QS(F)] of the Court of Quarter Sessions (all found within the Bibliothèque et Archives nationales du Québec, Centre d'archives de Montréal, hereinafter BANQ-M); and Applications for Pardons and Montreal Gaol Calendars (found at the National Archives of Canada in Ottawa, hereinafter NAC).

16 For discussion of the methodological issues raised by the sources, see Pilarczyk, "'So Foul A Deed': Infanticide in Montreal, 1825–1850," *Law and History Review* 30, no. 1 (May 2012): 576–9.

17 *Montreal Weekly Pilot*, 9 February 1847 (case of Michael McClusky); see also *Montreal Gazette*, 7 August 1847 (case of François X. Brunelle, noting that "[d]elicacy prevents our giving the evidence in this case"); *L'Aurore de Canadas*, 6 March 1840 (case of James Horn); *Montreal Gazette*, 9 February 1848 (case of Godfroy Céré). Similar dynamics were found in other crimes such as infanticide. See, e.g., Pilarczyk, "So Foul a Deed," 577.

18 Relatively few rape trials were covered in any detail during this period, in contrast to later periods. See, e.g., Dubinsky, "Sex and Shame," 178–179.

19 *Montreal Gazette*, 8 August 1847 (case of Francois Z. Brunelle).

20 More specifically, they generally included the names of defendants and less frequently the names of victims or complainants, or both. I am sympathetic to the arguments in favour of not disclosing the names of the victims in these cases, of the alleged perpetrators, and even possibly those convicted. However, as this information can often be gleaned from contemporary periodicals as well as in documents of record, and as the parties are all long deceased, I believe these stories are best recreated by using the names of parties. Especially given the legal system's penchant for stifling children's voices in these cases, I see naming them as a step towards revering their stories and lives. For discussion of this question, see, e.g, Backhouse, *Carnal Crimes*, 4.

21 By "unconscious testimony" I refer to the unstated assumptions, social mores, and other related aspects of larger culture that are embedded in sources and provide insight into the period. For further discussion in the context of Montreal infanticide cases, see Pilarczyk, "So Foul A Deed," 578. With respect to the newspapers, they were often deeply partisan and represent a variety of socio-political, linguistic, ethnic, and other agendas, but shared the commonality of generally reflecting white and middle-class sensibilities. For discussion of Montreal newspapers of the period, see ibid.

22 See, e.g., Hooper, "Child Sexual Abuse and the Regulation of Women," 55 (child sexual assault).

23 See, e.g., Constance Backhouse, "Credibility, Corroboration, and Legal Betrayal of Rape Victims," 2 and n.3 (unpublished paper on file with author, cited with permission); Erickson, *Westward Bound*, 120.

24 Fernand Ouellet, *Economic and Social History of Quebec, 1760–1850: Structures and Conjunctures* (Toronto: Gage Pub. in association with the Institute of Canadian Studies, Carleton, 1980), 659; H. Clare Pentland and Paul Arthur Phillips, *Labour and Capital in Canada, 1650–1860* (Toronto: Lorimer, 1981), 64.

25 G. Blaine Baker et al., *Sources in the Law Library of McGill University for a Reconstruction of the Legal Culture of Quebec, 1760–1890* (Montreal: Faculty of Law and Montreal Business Project, 1987), 9; Mary Anne Poutanen, *Beyond Brutal Passions: Prostitution in Early Nineteenth-Century Montreal* (Montreal: McGill-Queen's University Press, 2015), 24–9; for an overview of Montreal, see, e.g., Dany Fougères and Roderick MacLeod, eds., *Montreal: The History of a North American City*, 2 vols., (Montreal: McGill-Queen's University Press, 2017); in particular Laurent Turcot, "Daily Life in Montreal during the Eighteenth Century," 258–90; Dany Fougères, "The Modern City, 1840–1890," 380–423; Annie-Claude Labreque and Dany Fougères, "The Montreal Economy during the Nineteenth Century," 474–525; Martin Petitclerc, "Labour and the Montreal Working Class in the Nineteenth Century," 526–60; and Danielle Gauvreau, "Population, Social Identities, and Daily Life," 638–69.

26 Jean-Claude Robert, *Atlas Historique de Montréal* (Montréal: Libre Expression, 1994), 79.

27 Baker, *Sources in the Law Library of McGill University*, 13. For Montreal's economic transformation, see, e.g., Gerald Tulchinsky, *The River Barons; Montreal Businessmen and the Growth of Industry and Transportation, 1837–1853* (Toronto: University of Toronto Press, 1977); Fernand Harvey, *Revolution Industrelle et Travailleurs, Une Enquête Sur Les Rapports Entre La Capital Et Le Travail Au Quebec à La Fin Du 19e Siècle* (Montréal: Boréal Express, 1978).

28 Baker, *Sources in the Law Library of McGill University*, 13–14; Donald Fyson, *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada* (Toronto: Osgoode Society for Canadian Legal History by the University of Toronto Press, 2006), 8.

29 Danielle Gavreau, "Population, Social Identities, and Daily Life," in *Montreal*, edited by Fougères and Macleod, 646.

30 Baker, *Sources in the Law Library of McGill University*, 17–18; Fyson, *Magistrates, Police, and People*, 8–10. The archival sources were considerably spottier for this period as well.

31 Donald Fyson et al., "The Court Structure of Quebec and Lower Canada, 1764 to 1860," (Montreal: Montreal History Group, 2016) at http://www.profs.hst.ulaval.ca/Dfyson/Courtstr/o&t.htm.

32 See, e.g., Laurent Turcot, "Daily Life in Montreal during the Eighteenth Century," in *Montreal*, edited by Fougères and MacLeod, 275–6; see generally Mary Anne Poutanen, "Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context, *Histoire Sociale/Social History* 35, no. 69 (May 2002): 35–58.

33 Bruce A MacFarlane, "Historical Development of the Offence of Rape," in *100 Years of the Criminal Code in Canada: Essays Commemorating the Centenary of the Criminal Code in Canada*, edited by Richard Peck and Josiah Woods (Ottawa: Canadian Bar Association, 1993), 126–7. This remained the definition during this period; see, e.g., Jacques Crémazie, *Les lois criminelles anglaises, traduites et compilées de Blackstone, Chitty, Russel et autres* (Québec: Impr. De Fréchette & Cie, 1842), 82 ("signifies carnal and illegal knowledge of a girl or woman, by force and violence and against their will"; author's translation). Jurists were more divided on whether penetration was sufficient to constitute the offence, or whether proof of emission was also required, and this confusion was echoed in jurisprudence until the 1830s. Implicit in this is that rape could not be committed against a male, although forcible buggery or sodomy could.

34 See, e.g., Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," 202.

35 *Offences Against the Person Act*, 1828, 9 Geo. IV c 31, s. 18 (UK). See also MacFarlane, "Historical Development of the Offence of Rape," 151.

36 See, e.g., Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," 204.

37 *An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person*, 1841, 4 and 5 Vict. c 27, s. 2 ("And be it enacted, That every person convicted of the crime of Rape, shall suffer death as a Felon."); see also Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," 204; see also W. C. Keele, *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Law of Canada, and a Compendious and General View of the Provincial Law of Upper Canada, with Practical Forms, for the Use of the Magistracy*, 2nd ed. (Toronto: H & W Rowsell: 1843), 117.

38 *An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person*, 1841, 4 and 5 Vict. c 27, s. 18. See also Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," 205. English law appeared unsettled on this point. See, e.g., William Oldnall Russell, Daniel Davis, and Theron Metcalf, *A Treatise on Crimes and Indictable Misdemeanors*, vol. 1, 2nd ed. (London: Joseph

Butterworth and Son, 1826), 558–60; see, e.g., Crémazie, *Les lois criminelles anglaises*, 83.

39 *An Act for Better Proportioning the Punishment to the Offence, in Certain Cases, and for Other Purposes Therein Mentioned*, 1842, 6 Vict. c 5, s. 5. See also Keele, *The Provincial Justice, or Magistrate's Manual*, 108; Backhouse, "Nineteenth-Century Canadian Rape Law, 1800–1892," 206.

40 *An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person*, 1841, 4 and 5 Vic. c 27, s. 25 (subjecting assaults with intent to commit felony to a term not greater than two years in prison, as well as fine and the provision of sureties to keep the peace, except for assault with intent to rape or buggery); see also Keele, *The Provincial Justice, or Magistrate's Manual*, 54.

41 *An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person*, 1841, 4 and 5 Vic. c 27, s. 27; see also Keele, *The Provincial Justice, or Magistrate's Manual*, 55.

42 Macpherson William. "Treatise on the Law Relating to Infants," (London, A. Maxwell & Son, 1842).

43 Ibid., at 572. Minors could be emancipated earlier if orphaned, etc.; see, e.g., ibid., at 576 discussing such provisions under the French *Civil Code*.

44 Ibid., at 572. He further noted some restrictions still remained above those age limits.

45 Ibid., at 576–7.

46 Graham Parker, "The Legal Regulation of Sexual Activity and the Protection of Females," *Osgoode Hall Law Journal* 21, no.2 (September 1983): 211; see also Keele, *The Provincial Justice, or Magistrate's Manual*, 517.

47 In the UK, the age of consent was raised to thirteen in 1875, and to sixteen in 1885. Jackson, *Child Sexual Abuse*, 3. In Canada, it was twelve until 1890, when raised to fourteen. Backhouse, "Credibility," 5 and n.15.

48 *An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person*, 1841, 4 and 5 Vict. c 27, s. 17. Like rape, these were crimes against females only. Interestingly, other jurisdictions inverted this sentencing regime; nineteenth-century Connecticut treated crimes against females over ten as capital (changed in 1830 to life in prison), while under ten was punishable by life (changed to seven to ten years' imprisonment). Nancy Hathaway Steenburg, *Children and the Criminal Law in Connecticut, 1635–1855: Changing Perceptions of Childhood* (New York: Routledge, 2005), 171.

49 Other than abduction, these offences generally fall outside the purview of this essay. Cases involving incest, and crimes related to child abuse and neglect are examined in Pilarczyk, "Child Abuse," 370–426. For discussion of infanticide, see Pilarczyk, "So Foul a Deed," 575–634.

50 Jackson, *Child Sexual Abuse*, 5. For discussion of childhood, see, e.g., Phillipe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Alfred A. Knopf, 1962); Hugh Cunningham, *Children and Childhood in Western Society Since 1500* (London; New York: Longman, 1995); Peter Coveney, *The Image of Childhood, The Individual and Society: A Study of the Theme in English Literature* (Baltimore: Penguin Books, 1967); Colin Heywood, *A History of Childhood: Children and Childhood in the West from Medieval to Modern Times* (Oxford: Polity Press, 2015).

51 Jackson, *Child Sexual Abuse*, 114. For discussion, see generally James R. Kincaid, *Child Loving: The Erotic Child and Victorian Culture* (New York: Routledge, Chapman & Hall, 1992).

52 Jackson, *Child Sexual Abuse*, 4–5; see also Hooper, "Child Sexual Abuse and the Regulation of Women," 56 (founding of NYSPCC).

53 See, e.g., Jackson, *Child Sexual Abuse*, 2; George Behlmer, *Child Abuse and Moral Reform in England, 1870–1908* (Stanford: Stanford University Press, 1982). The reluctance to consider incest within these movements was to remain the case until the early twentieth century. Sangster, "Masking and Unmasking the Sexual Abuse of Children," 505.

54 Jackson, *Child Sexual Abuse*, 2.

55 Ibid.

56 For discussion of the legal regime governing claims of physical abuse or neglect of children, see Pilarczyk, "Child Abuse"; for claims against employers by servants (including minors), see Pilarczyk, "'Too Well Used by His Master': Judicial Enforcement of Servants' Rights in Montreal, 1830–1845," *McGill Law Journal* 46 (2001): 491–529.

57 The "virgin cure" or "virgin cleansing" myth has spanned centuries and jurisdictions, and was prominent in the Victorian era in the UK. It continues to persist today. See, e.g., Hanne Blank, *Virgin: The Untouched History* (New York, NY: Bloomsbury USA, 2007); Roger Davidson, "'This pernicious delusion': Law, Medicine, and Child Sexual Abuse in Early Twentieth-Century Scotland," *J. of the History of Sexuality* vol. 10 no. 1 (2001): 62; Deborah Posel, "The Scandal of Manhood: 'Baby Rape' and the Politicization of Sexual Violence in Post-Apartheid South Africa," *Culture, Health, and Sexuality* (May 2005): 239–52.

58 See, e.g., Jackson, *Child Sexual Abuse*, 32.

59 Karen Dubinsky and Adam Givertz, "'It Was Only a Matter of Passion': Masculinity and Sexual Danger" in *Gendered Pasts; Historical Essays in*

Feminity and Masculinity in Canada, edited by Kathryn McPherson et al. (Toronto: University of Toronto Press, 2003), 69; see also Backhouse, *Carnal Crimes*, 9 (noting that early researchers depicted sexual assault as "anomalous individual acts").

60 Rob Shields, *Places on the Margin: Alternative Geographies of Modernity* (London: Routledge, 1991), 7.

61 Sangster, "Masking and Unmasking the Sexual Abuse of Children," 505.

62 Most likely meaning here "to stimulate to sympathetic feeling"; see *The Oxford English Dictionary*: https://www.oed.com.

63 *Montreal Gazette*, 3 March 1840.

64 See, e.g., *Montreal Herald*, 3 March 1840; *Montreal Transcript*, 3 March 1840; *L'Aurore de Canadas*, 6 March 1840 (case of James Horn).

65 Although relatively few such examples seem to have survived, this would likely not be unusual as private prosecutors were expected to help line-up witnesses and support the Crown's prosecution.

66 The Queen v. James Horn (KB 30 November 1839), *in* BaNQ-M, KB(F) (affidavit of Henry and Mary Hadley).

67 See *L'Aurore de Canadas*, 13 March 1840; *Montreal Gazette*, 17 March 1840; *Montreal Herald*, 17 March 1840.

68 It is also possible this was charged down as a lesser offence; however, this was counseled against by at least one contemporary jurist, who cautioned against charging for assault with intent if there was any likelihood the full charge would be proven, as (under English law at least) it might result in acquittal on the grounds that the misdemeanor was subsumed under the felony. Russell, *A Treatise on Crimes*, 564.

69 The Queen v. Godfroy Céré (KB 18 November 1847), *in* BaNQ-M, KB(F) (affidavit of Elailde Labour). Other details are not reclaimable from the document. As was typical, newspapers refused to discuss the evidence. See, e.g., *Montreal Gazette*, 9 February 1848 (trial).

70 *Montreal Transcript*, 17 February 1848 (account of conviction and sentence); see also *Montreal Gazette*, 16 February 1848.

71 *Montreal Transcript*, 17 February 1848. *Montreal Gazette*, 16 February 1848, remarked similarly that "[t]he prisoner seemed quite overwhelmed by his situation."

72 *La Minerve*, 27 March 1848 (account of commutation); MG(R), 18 November 1847 (noting his incarceration, and release on 24 April 1848 "by being sent to Penitentiary"). The pardon application was not found. For discussion of pardons see, e.g., Carolyn Strange, "Mercy and Parole in Anglo-American Criminal-Justice Systems from the Eighteenth Century to the Twenty-First Century," in *The Oxford Handbook of the History of Crime and Criminal Justice*, edited by Paul Knepper and Anja Johansen (New York: Oxford University Press, 2016), 573–96.

73 The Queen v. Étienne Carrier (KB 25 February 1843), *in* BaNQ-M, KB(R).

74 The Queen v Étienne Carrier (KB 21 January 1843), *in* BaNQ-M, KB(F) (affidavit of Joseph Carron).

75 *Montreal Gazette*, 2 March 1843 (trial and verdict); see also *La Minerve*, 2 March 1843, ibid.

76 *La Minerve*, 2 March 1843 (author's translation). His acquittal was also noted in The Queen v Étienne Carrier (KB 28 February 1843), *in* BaNQ-M, KB(R).

77 *La Minerve*, 27 August 1829 (conviction); *La Minerve*, 31 August 1829; *Canadian Courant*, 2 September 1829 (sentence).

78 *Montreal Weekly Pilot*, 29 January 1847 (citing *Montreal Gazette*).

79 *La Minerve*, 8 February 1847.

80 See, e.g., *Montreal Gazette*, 21 January 1847; *Montreal Weekly Pilot*, 26 January 1847; and *Montreal Weekly Pilot*, 29 January 1847 (committed to trial); *Montreal Weekly Pilot*, 9 February 1847 (indictment, trial, and verdict); *La Minerve*, 8 February 1847 (verdict); *Montreal Weekly Pilot*, 19 February 1847; *Montreal Weekly Pilot*, 19 February 1847; *La Minerve*, 15 February 1847 (sentence).

81 The Queen v. Francoise Brunelle (KB 12 July 1846), *in* BaNQ-M, KB(F) (affidavit of Marie Belle). No other documents related to this case have survived.

82 See, e.g., *Montreal Gazette*, 7 August 1847; *Montreal Transcript*, 17 August 1847; see also *La Minerve*, 8 February 1847 (true bill).

83 See, e.g., *Montreal Gazette*, 7 August 1847 (trial and conviction); *La Minerve*, 16 August 1847; *Montreal Weekly Pilot*, 17 August 1847; *L'Aurore*, 17 August 1847; *Montreal Gazette*, 18 August 1847; *Montreal Transcript*, 18 August 1847 (sentence).

84 Christine Stansell, *City of Women, Sex and Class in New York, 1789–1860* (New York: Random House, 1986), 182–3.

85 See, e.g., Robertson, *Crimes Against Children*, 41.

86 Ibid., 161. Robertson notes that this offense, with its lesser evidentiary burden and lower sentences, effectively supplanted rape prosecutions after it was introduced in New York City in 1927. Ibid.,161–78.

87 DR v. Charles Cooper (QS 13 September 1826), *in* BaNQ-M, QS(F) (deposition of Mary Wright the younger).

88 Ibid.

89 DR v. Charles Cooper (QS 13 September 1826), *in* BaNQ-M, QS(F) (deposition of Mary Wright). She claimed she would have filed the

deposition earlier but her husband had been wounded by an axe in an unrelated incident.

90 DR v. Malcolm Fraser (QS 12 August 1833), *in* BaNQ-M, QS(F) (deposition of James Fraser).

91 See, e.g., Crémazie, *Les lois criminelles anglaises,* 82; Russell, *Treatise on Crimes*, 557.

92 The Queen v. Thomas Williamson (QS 13 July 1840), *in* BaNQ-M, QS(F) (deposition of Francis C.F. Arnoldi on claim of assault with intent to ravish).

93 Domina Regina v. Thomas Williamson (QS 13 July 1840), *in* BaNQ-M, QS(F) (ibid., on claim of "loose idle and disorderly" conduct). The records of the Police Court confirm "A warrant of Arrest was granted on the Affidavit of Francis C.F. Arnoldi on charge of an Assault with intent to Ravish, The Defendant was arrested, after Examination case discharged." Domina Regina v. Thomas Williamson (PC 12 July 1840), BaNQ-M, PC, 233. It is for this loose, idle and disorderly charge that his files may have ended up in those of the Court of Quarter Sessions.

94 Russell, *A Treatise on Crimes*, 560.

95 Dominus Rex v. Joseph Levère Clément (QS 17 January 1832), *in* BaNQ-M, QS(F) (complaint of Angelique Chartrand); ibid., (QS 19 January 1832), *in* BaNQ-M, QS(F) (true bill for aggravated assault and battery). This case was not counted herein.

96 *Montreal Gazette*, 23 October 1850.(case of Joachim Legault dit Desloriers). The judge admitted him to bail until decision was rendered at the end of term, although no information on the formal outcome was found. This case was not counted herein. I am aware of no period legal definition for caress, and its common meaning as a loving or gentle touch seems belied by the facts as alleged.

97 For discussion of indecent assaults in twentieth-century Canada, see, e.g., Backhouse, *Carnal Crimes*.

98 Mary Beth Hamilton Arnold, "'The Life of a Citizen in the Hands of a Woman': Sexual Assault in New York City, 1790–1820" in *Passion & Power: Sexuality in History*, edited by Kathy Peiss and Christina Simmons (with Robert A. Padgug) (Philadelphia: Temple University Press, 1989), 35–56.

99 See, e.g., Chapman, "Inquiring Minds Want to Know," 202; Ramos, "A Most Detestable Crime," 28.

100 See, e.g., Carolyn Conley, "Rape and Justice in Victorian England," *Victorian Studies* 29, no.4 (Summer 1986): 526–8.

101 As noted in Backhouse, "The Sayer Street Outrage," 48, in the context of later nineteenth-century Ontario:

> Most criminal proceedings were initiated by concerned citizens at this time. Fledgling police forces were simply unequipped to handle much more than preliminary investigation and arrests ... . The laying of charges was a fairly heavy responsibility for private citizens to bear, but ... also permitted considerable freedom for individuals to activate the criminal law.

102 For discussion, see generally Backhouse, *Carnal Crimes*.

103 NAC, 14 Appeal Petitions (AP), 0.5360-5362 (pardon application of François Reaume).

104 Domina Regina v. John Spooner (KB 7 May 1840), in BaNQ, KB(F) (affidavit of Julia Dunvar).

105 Jackson, *Child Sexual Abuse*, 8–9. Jackson's description of these documents albeit for a later period in the UK, are insightful:

> The historian is confronted with a sea of stories all claiming to be "truths," a series of contestations in courtroom or street, words of anger, bitterness, reproach, pain. However, although the sequence of "truths" may have been framed in line with certain pre-existing narrative structures and in relation to a wider cultural and symbolic framework, there is also blood, pain and tears which make it impossible to forget there is a "real" child, father, or mother involved.

106 Dominus Rex v. Luke Bowen (KB 30 September 1830), *in* BaNQ-M, KB(F) (affidavit of Melonie Poutré).

107 Domina Regina v. John Spooner (KB 7 May 1840), *in* BaNQ, KB(F) (affidavit of Julia Dunvar).

108 The Queen v. Jean Baptiste Rivais (KB 18 July 1843), *in* BaNQ-M, KB(F) (affidavit of Margaret Holmes). As she was above the age of twelve, this case is not counted.

109 Jackson, *Child Sexual Abuse,* 71; for discussion of medical testimony in child rape trials see generally ibid., 71–89.

110 See, e.g., T.R. and J.B. Beck, *Elements of Medical Jurisprudence* (Albany: Websters and Skinners, 1823); Thomas Percival, *Medical Ethics* (Manchester: S. Russel, 1803); Michael Ryan, *A Manual of Medical Jurisprudence: Compiled from the Best Medical and Legal Works* (Philadelphia: Cary and Lea, 1832); Alfred Swaine Taylor, *Elements of Medical Jurisprudence* (London: Deacon, 1844).

111 Dominus Rex v. Jean Baptiste Labelle the younger (KB 19 May 1825), *in* BaNQ-M, KB(F) (habeas corpus and arrest warrant). This could well be an

example of a man attempting the "virgin cure" as a supposed cure for sexually transmitted diseases.

112 *Montreal Gazette,* 7 September 1826; see also *Montreal Gazette,* 21 August 1826 (citing the *Herald*) (case of Joseph Massé).

113 The Queen v. Etienne Carrier (KB 21 January 1843), *in* BaNQ-M, KB(F) (affidavit of Theotiste Lavallé).

114 Ibid., (affidavit of Edward Walter Carter, JP, Surgeon); see also ibid., (affidavit of John Mignault, Surgeon).

115 *Montreal Gazette,* 28 February 1843 (true bill); *Montreal Gazette,* 2 March 1843 (trial and acquittal); *La Minerve,* 2 March 1843 (true bill; also trial and acquittal); KB February 1843–March 1843 in BaNQ-M, KB(R), 10, (true bill and plea), 22–3, (trial and acquittal) (KB 28 February 1843).

116 *La Minerve,* 2 March 1843. One wonders the reception such a defendant might have had in his community following such an event: did neighbours accept the outcome, or was he ostracized? The question must remain unanswered.

117 NAC, 14 Appeal Petitions (AP), 0.5360-5362 (pardon application of François Reaume, 23 October 1839). Unlike the usual flowery and obsequious petitions that attacked the fairness of their trials, excoriated Crown witnesses, claimed exculpatory evidence was wrongfully excluded, or earnestly protested their innocence, Reaume made none of these claims. While they frequently referenced family members facing penury and obloquy, as did he, his assertion he had never before faced charges was unusual. One is tempted to infer that he was hoping for a pardon on humanitarian grounds only.

118 Ibid. As she was eleven, she was considerably older than many of the other victims.

119 A situation that was to continue well into the twentieth century. See, e.g., Backhouse, *Carnal Crimes,* 173–174; Backhouse, "Credibility," 13–14.

120 Compare with Arnold, "The Life of a Citizen in the Hands of a Woman," 37 (detailing victims as young as six years old).

121 The Queen v. Francoise Brunelle (KB 12 July 1846), *in* BaNQ-M, KB(F) (affidavit of Marie Belle).

122 For the legal system's questioning of the reliability of child witnesses, see, e.g., Steenburg, *Children and the Criminal Law in Connecticut, 1635–1855,* 161–82; Backhouse, *Carnal Crimes,* 165–92.

123 Dominus Rex v. Charles Cooper (QS 13 September 1826), *in* BaNQ-M, QS(F) (deposition of Mary Wright the younger). For a similar example, see, e.g., The Queen v. Francoise Brunelle (KB 12 July 1846), *in* BaNQ-M, KB(F) (affidavit of Marie Belle); Dubinsky, "Sex and Shame," 175; Robertson, *Crimes Against Children,* 42.

124 The Queen v. Francois X. Brunelle (KB 12 July 1846), *in* BaNQ-M, KB(F) (affidavit of Marie Belle). See also Robertson, *Crimes Against Children,* 42.

125 Robertson, *Crimes Against Children,* 42

126 See, e.g., *Montreal Gazette,* 8 March 1842 (case of William Smout), reporting that the "prosecutrix and other witnesses for the Crown not appearing to support their complaint, a jury was impanelled (sic) to acquit the defendant, who was accordingly acquitted and discharged."

127 See, e.g., Fyson, *Magistrates, Police and People,* especially 227–71.

128 See, e.g., Dominus Rex v. Jean Baptiste Labelle the younger (KB 19 May 1825), *in* BaNQ-M, KB(F); Domina Regina v. John Spooner (KB 7 May 1840), ibid.

129 For discussion of women utilizing the legal system, see Fyson, *Magistrates, Police, and People*; see also Mary Anne Poutanen, "Reflections of Montreal Prostitution in the Records of the Lower Courts, 1810-1842," in *Class, Gender, and the Law in Eighteenth and Nineteenth-Century Quebec: Sources and Perspectives,* edited by Donald Fyson, Colin Coates, and Kathryn Harvey (Montreal: Montreal History Group, 1993), 99–125; Kathryn Harvey, "Amazons and Victims: Resisting Wife-Abuse in Working-Class Montréal, 1869–1879," *Journal of the Canadian Historical Association* 2 (1991): 131–48.

130 For similar discussion around adult victims, see, e.g., Ramos, "A Most Detestable Crime," 30.

131 Seven out of fifteen defendants were identified as French-Canadian.

132 See note 107.

133 See, e g., Dubinsky, "Sex and Shame," 177; Ramos, "A Most Detestable Crime."

134 Philip Girard, Jim Phillips, and Blake Brown, *A History of Law in Canada, Volume One: Beginnings to 1866* (Toronto: University of Toronto Press, 2018), 580.

135 *Montreal Transcript,* 10 September 1842; see also *Montreal Gazette,* 3 September 1842 (case of Ambroise Leseige). This case was not included in this study. It was a well-known legal truism that prostitutes were incapable of being raped, even if the common law supposedly held to the contrary. See, e.g., Russell, *A Treatise on Crimes,* 563; Crémazie, *Les Lois Criminelles Anglaises,* 83. Both noted this would go to the witnesses' credibility, however.

136 This mirrors what others have found; see, e.g., Chapman, "Inquiring Minds Want to Know," 200–2; Arnold, "The Life of a Citizen in the Hands of a Woman," 37.

137 *Montreal Gazette*, 2 March 1843 (trial of Etienne Carrier).
138 Pilarczyk, "So Foul a Deed," 175; Pilarczyk, "'Acts of the Most Sanguinary Rage': Spousal Murder in Montreal, 1825–1850," *American Journal of Legal History* 57, no. 3 (2017): 338.
139 *Montreal Gazette*, 7 September 1826.
140 *Times and Daily Commercial Advertiser*, 2 February 1844 (citing the *Examiner*).
141 A similar point was made by other commentators. See, e.g., Arnold, "The Life of a Citizen in the Hands of a Woman," 39; Robertson, *Crimes Against Children*, 38.
142 This likely reflects that children were generally given tasks from very early childhood; as mentioned earlier, the construct of childhood as necessitating development and a need for recreation is a modern one.
143 *Montreal Gazette*, 29 October 1850 (trial and verdict for rape). See also *Montreal Weekly Pilot*, 17 January 1850 (true bill for assault with intent); *La Minerve*, 21 January 1850 (ibid.); *Montreal Gazette*, 29 March 1850 (ibid.); *Montreal Weekly Pilot*, 30 March 1850 (plea to assault with intent); *Montreal Gazette*, 17 July 1850 (true bill for rape); *Montreal Gazette*, 19 July 1850 (plea to charge of rape); *La Minerve*, 28 October 1850 (trial and verdict for rape); *La Minerve*, 31 October 1850 (ibid.); *Montreal Weekly Pilot*, 31 October 1850 (ibid.); *La Minerve*, 31 October 1850 (trial and verdict for assault with intent).
144 The Queen v. Étienne Carrier (KB 25 February 1843), *in* BaNQ-M, KB(R).
145 The Queen v. Francoise Brunelle (KB 12 July 1846), *in* BaNQ-M, KB(F) (affidavit of Marie Belle).
146 The Queen v. William Smout (KB 12 April 1841), *in* BaNQ-M KB(F) (affidavit of James Anderson); see also affidavit of Mary Anne Anderson (ibid.). It is unfortunate to note that Mary Anne could also face corporal punishment at her father's hands on top of the trauma she suffered; this is another example of the fear that overlay many such assaults.
147 See, e.g., DR v. Charles Cooper (QS 13 September 1826), *in* BaNQ-M, QS(F) (deposition of Mary Wright the younger); Domina Regina v. John Spooner (KB 7 May 1840), *in* BaNQ, KB(F) (affidavit of Julia Dunvar); NAC, 14 Appeal Petitions (AP), 0.5360-5362 (pardon application of François Reaume, 23 October 1839).
148 Similarly to Backhouse, *Carnal Crimes*, 168; Robertson, *Crimes Against Children*, 38.
149 *Montreal Weekly Pilot*, 6 November 1846 (citing *Three Rivers Gazette*). This case was not counted herein as taking place outside of the Judicial District of Montreal.

150 See, e.g., Steenburg, *Children and the Criminal Law in Connecticut*, 178.
151 Ibid.
152 In the UK (excluding Scotland) until 1908. See, e.g., Hooper, "Child Sexual Abuse and the Regulation of Women," 57; Steenburg, *Children and the Criminal Law in Connecticut*, 178. Other jurisdictions had outlawed it much earlier. Ibid., 178.
153 I use the term "shadow evidence" to refer to the phenomenon of acts surfacing within judicial records but in a secondary context to the one being examined: for example, a domestic abuse complaint that mentions incest in the narrative, but for which that act is not related to the legal cause of action; or in which a term (such as incest) is used to describe an allegation or charge that does not comport with accepted legal categories of the period. For period examples, see Pilarczyk, "To Shudder at the Bare Recital," 393–394.
154 *Montreal Gazette*, 21 August 1826 (committed to gaol); *Montreal Gazette*, 7 September 1826 (true bill, trial, and verdict); *Canadian Courant*, 9 September 1826 (ibid.). The file was not found. For an example of a case charging the father of a fifteen year old (and accordingly not included herein) with "assault with intent to ravish his daughter," see The Queen v. Joseph Cavallier (KB 6 December 1847), *in* BaNQ-M, KB(F).
155 Queen v. James Horn (KB 30 November 1839, *in* BaNQ-M, KB(F) (letter to Attorney General by Henry Headley).
156 NAC, 14 Appeal Petitions (AP), 0.5360-5362 (pardon application of François Reaume, 23 October 1829). The notation "not referred the case appearing so bad" was written on his petition.
157 For alcoholism as accelerant in family violence during this period, see, e.g., Kathryn Harvey, "'To Love, honour, and obey': Wife-Battery in Working Class Montreal, 1869–1879," *Urban History Review* 19, no. 2 (June 1990): 128; Pilarczyk, "'Justice in the Premises': Family Violence and the Law in Montreal, 1825–1850" (DCL thesis McGill University, 2003), 214–361 (spousal violence); ibid., 362–445 (spousal murder). It often provided mitigation for the murderous husband and provocation on the part of the deceased spouse. See Pilarczyk, "Acts of the Most Sanguinary Rage," 330–1. For alcoholism and child abuse, see Pilarczyk, "Child Abuse," 388–9.
158 *Black's Law Dictionary*, 6th ed. (St Paul: West Publishing, 1991), 3.
159 Russell, *Treatise on Crimes*, 569–81.
160 See, e.g., Samuel X. Radbill, "A History of Child Abuse and Infanticide," in *Violence in the Family*, edited by Suzanne K Steinmetz and Murray A. Straus (New York: Harper & Row, 1974), 173–9.

161 Dominus Rex v. Joseph Guitard (KB 18 June 1830), *in* BaNQ-M, KB(F) (notice of commitment to Montreal Gaol based on arrest warrant). The documents show that the couple left voluntarily and against her father's permission for purposes of being married. Ibid., (KB 1 July 1830) (affidavit of Noël Joannet); ibid., (affidavits of Antoine Lavallée and his wife).

162 See, e.g, The Queen v. Emile Blais et al. (KB 23 July 1841) *in* BaNQ-M, KB(F) (petition by Sister Scholastique for habeas corpus alleging abduction); ibid. (KB 20 July 1841) (petition by William N. Crawford for habeas corpus for abduction).

163 *La Minerve*, 7 September 1843 (trial of Jean Baptiste Rivais); The Queen v. Jean Baptiste Rivais (KB 18 July 1843), *in* BaNQ-M, KB (F). See also *Montreal Gazette*, 5 September 1843; *Times and Commercial Advertiser*, 7 September 1843.

164 Dominus Rex v. Joseph Latillip et al. (KB 1 September 1840) *in* BaNQ, KB(F) (affidavit of Julia Carpentier). Her father's affidavit also alleged that Joseph and his father fought with neighbours and himself after they intervened. Ibid., (affidavit of Laurent Carpentier). The justice of the peace who transcribed these affidavits appeared responsible for much of the confusion, between often-illegible handwriting, indifferent spelling, lack of punctuation, and inconsistencies in how he spelled the parties' names.

165 *Montreal Gazette*, 19 August 1846; see also (MG 17 June 1848) *in* BaNQ, MG(R) (bailed 8 July 1848).

166 *Montreal Transcript*, 23 February 1847 (indictment of François Xavier Beaudry for abduction of witnesses).

167 *Montreal Weekly Pilot*, 9 February 1849.

168 Ibid.

169 Ibid., 19 February 1849; *La Minerve*, 15 February 1849; *Montreal Gazette*, 15 February 1849. His affluence is further shown by affidavits filed on his behalf by neighbours. (MG 6 January 1849) *in* BaNQ, MG(R).

170 See, e.g., *Montreal Gazette*, 18 March 1850; *Montreal Weekly Pilot*, 16 March 1850 (true bill); *Montreal Gazette*, 20 March 1850; *Montreal Weekly Pilot*, 23 March 1850; *La Minerve*, 21 March 1850 (trial). For further discussion of this case in the context of incest or abduction, or both, see Pilarczyk, "Child Abuse," 395–7.

171 *Montreal Gazette*, 1 April 1850 (italics mine); The Queen v. Michael Coleman (KB March 1850-October 1856) *in* BaNQ, KB(R), 59 (motion denied), ibid., (KB 26 March 1850).

172 *Montreal Gazette*, 1 April 1850; *La Minerve*, 1 April 1850; *Montreal Weekly Pilot*, 3 April 1850; The Queen v. Michael Coleman *in* BaNQ, KB(R), 66–7 (sentence).