

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Robb*, 2026 NSPC 9

**Date:** 20260220

**Docket:** 8899073

**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

Glenn Kenneth Robb

**Restriction on Publication:** [s. 486.4 \*Criminal Code\*](#) – Any information that could identify the complainant shall not be published in any document or transmitted in any way.

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** January 23, 2026, in Dartmouth, Nova Scotia

**Decision:** February 20, 2026

**Charge:** s. 271 of the [Criminal Code](#), RSC 1985, c C-46

**Counsel:** Michael Blanchard, for the Crown  
Peter Kidston, for the Accused

**By the Court:**

**Introduction**

[1] This decision concerns an application by the Crown to introduce evidence of prior sexual history in the upcoming trial of the Accused, Glenn Kenneth Robb for sexual assault contrary to section 271 of the *Criminal Code*.

[2] Specifically, the Crown makes application pursuant to section 276.1 of the *Criminal Code* and pursuant to the principles set out in the decision of *R v. Seaboyer* [1991] 2 SCR 577.

**Background**

[3] In this matter, the Complainant alleges that on November 16, 2024, while attending at Monte's Showbar and Grill in Dartmouth, Nova Scotia, she was sexually assaulted by Mr. Robb.

[4] The anticipated evidence of the Complainant is that Mr. Robb approached her several times while she was dancing at the bar, wherein he brushed against her body, pressed his chest to her chest, touched her on her buttocks, and pressed his body against her, whispering in her ear that he still loved her. It is alleged the Complainant did not give consent to any of the sexual touching as described.

[5] In this application, the Crown is seeking to adduce the following evidence:

1. That between 2018 and 2019, the Complainant and Mr. Robb were in an intimate partner relationship;
2. Following the conclusion of their relationship, Mr. Robb was in possession of an intimate image of the Complainant, and threatened to distribute this image;
3. In February 2020, Mr. Robb sent an intimate image of the Complainant without their consent to [another male].

## The Law

[6] The relevant sections of the *Criminal Code* are contained in sections 278.93 and 276.1 as follows:

278.93(1) Application for hearing — sections 276 and 278.92

Application may be made to the judge, provincial court judge or justice by or on behalf of the Accused for a hearing under section 278.94 to determine whether evidence is admissible under subsection 276(2) or 278.92(2).

278.93(2) Form and content of application

An application referred to in subsection (1) must be made in writing, setting out detailed particulars of the evidence that the Accused seeks to adduce and the relevance of that evidence to an issue at trial, and a copy of the application must be given to the prosecutor and to the clerk of the court.

278.93(3) Jury and public excluded

The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.

278.93(4) Judge may decide to hold hearing

If the judge, provincial court judge or justice is satisfied that the application was made in accordance with subsection (2), that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or any shorter interval that the judge, provincial court judge or justice may allow in the interests of justice and that the evidence sought to be adduced is capable of being admissible under subsection 276(2), the judge, provincial court judge or justice shall grant the application and hold a hearing under section 278.94 to determine whether the evidence is admissible under subsection 276(2) or 278.92(2).

276(1) Evidence of Complainant's sexual activity

In proceedings in respect of an offence under ...271..., evidence that the Complainant has engaged in sexual activity, whether with the Accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the Complainant

- (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
- (b) is less worthy of belief.

#### 276(2) Conditions for admissibility

In proceedings in respect of an offence referred to in subsection (1), evidence shall not be adduced by or on behalf of the Accused that the Complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the Accused or with any other person, unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 278.93 and 278.94, that the evidence

- (a) is not being adduced for the purpose of supporting an inference described in subsection (1);
- (b) is relevant to an issue at trial; and
- (c) is of specific instances of sexual activity; and
- (d) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

#### 276(3) Factors that judge must consider

In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

- (a) the interests of justice, including the right of the Accused to make a full answer and Defence;
- (b) society's interest in encouraging the reporting of sexual assault offences;
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (d) the need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (f) the potential prejudice to the Complainant's personal dignity and right of privacy;
- (g) the right of the Complainant and of every individual to personal security and to the full protection and benefit of the law; and

(h) any other factor that the judge, provincial court judge or justice considers relevant.

276(4) Interpretation

For the purpose of this section, "sexual activity" includes any communication made for a sexual purpose or whose content is of a sexual nature.

[7] On the face of the sections of the *Criminal Code*, they are inapplicable to the Crown as they refer to circumstances where the Accused seeks to adduce evidence of this type. However, the Supreme Court of Canada in *R. v. Barton*, 2019 SCC 33 made clear the trial judges should follow the ruling in *R. Seaboyer, supra*, to determine the admissibility of Crown-lead other sexual activity evidence in a *voir dire*. As noted in paragraph 80:

[80] ... First, s. 276(1), which confirms the irrelevance of the “twin myths”, is categorical in nature and applies irrespective of which party has led the prior sexual activity evidence. .... Moving to s. 276(2), while it is true that this provision applies only in respect of “evidence . . . adduced by or on behalf of the Accused”, the common law principles articulated in *Seaboyer* speak to the general admissibility of prior sexual activity evidence. Given that the reasoning dangers inherent in prior sexual activity evidence are potentially present regardless of which party adduces the evidence, trial judges should follow this Court’s guidance in *Seaboyer* to determine the admissibility of Crown-led prior sexual activity evidence in a *voir dire* (see pp. 633-36).

[8] The Supreme Court of Canada reiterated this approach in *R. v. Goldfinch*, 2019 SCC 38 when it held at paragraph 142 as follows:

[142] ... It is true that the Crown is not subject to the procedural requirements of ss. 276.1 and 276.2, which apply only where the Accused seeks to adduce evidence of the Complainant’s other sexual activity. However, the Crown is subject to s. 276(1)’s prohibition on twin myth reasoning and must also abide by the common law principles articulated by this Court in *Seaboyer*. Indeed, in *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, this Court stated that trial judges should determine the admissibility of Crown-led prior sexual activity evidence through a *voir dire* prior to trial, applying this Court’s guidance in *Seaboyer* (*Barton*, at para. 80).

[9] In the decision of *R. v. Kinamore*, 2025 SCC 19 the Supreme Court of Canada confirmed its previous decisions as to the presumptive inadmissibility of Crown led sexual activity evidence and the requirement of the Crown to bring application to determine its admissibility in a *voir dire* pursuant to the *Seaboyer* principles. Expanding upon the rationale for this exclusionary rule, the court held at paragraph 35 as follows:

[35] The rationale behind treating Crown-led sexual history evidence as presumptively inadmissible at common law is rooted in the same three purposes as the s. 276 regime: to exclude irrelevant or misleading evidence, to protect an Accused's right to a fair trial, and to safeguard the dignity, privacy, and equality interests of Complainants. As this Court noted in *R.V.*, regardless of which party adduces evidence of a Complainant's sexual history, the trial judge must always "guard against twin-myth reasoning as well as prejudice to the Complainant, the trial process and the administration of justice" (para. 78). To be clear, the purpose of the common law exclusionary rule for Crown-led sexual history evidence is not to eliminate myths and stereotypes about the Accused or other witnesses in sexual offence trials. Instead, the rule embraces the common law's broader asymmetrical approach to myths and stereotypes in sexual offence trials, which recognizes the need to eradicate well-established forms of discriminatory reasoning about Complainants (*Kruk*, at para. 44).

[10] The Court went on to clarify the application of the principles articulated in *Seaboyer, supra* to Crown-led evidence, noting the difference in the standard to be applied from Defence-led evidence as follows:

[38] Moreover, the common law's substantive admissibility requirements for Crown-led sexual history evidence must be clarified given that the *Seaboyer* principles were articulated with Defence-led evidence in mind. Specifically, it was held in *Seaboyer* that, in order for sexual history evidence to be admitted, its probative value must not be "substantially outweighed" by its prejudicial effect (p. 635). This reflects the common law standard governing the admissibility of Defence-led evidence generally, which is specifically calibrated to respect an Accused's right to a fair trial (see *R. v. Grant*, 2015 SCC 9, [2015] 1 S.C.R. 475,

at para. 19). By contrast, Crown-led evidence is inadmissible where its prejudicial effect simply outweighs its probative value. This is the applicable standard for admitting Crown-led sexual history evidence. However, where the Crown and the Defence seek to rely on the same evidence, the standard for Defence-led evidence should apply.

...

[40] I would also note that, in weighing the probative value and prejudicial effect of Crown-led evidence of a Complainant's sexual history, trial judges must consider the non-exhaustive list of factors set out in s. 276(3) of the *Criminal Code* .... Trial judges should remember, however, that some of the s. 276(3) factors have been articulated with Defence-led evidence in mind. For example, s. 276(3)(a) refers to consideration of an Accused's right to make a full answer and Defence, which is not implicated in the same way in the context of Crown-led evidence.

[41] In sum, the common law principles governing the admissibility of Crown-led sexual history evidence must be harmonized with the statutory regime for Defence-led evidence of this kind, subject only to the necessary modification that I have detailed above.

[11] *Kinamore, supra* goes on at paragraphs 45 to 47 to provide an overview of the procedure for both Stage I and Stage II of the Crown-led application for sexual history evidence. The procedure is summarized as follows:

[12] Stage I:

- The Crown must prepare a written application that sets out detailed particulars of the evidence that it seeks to adduce and the relevance of that evidence to an issue at trial (s.278.93 (2)).
- The Crown must provide fair notice to the Accused and the court if it seeks to bring an application.
- A s. 276 application from the Accused will only be necessary when the Defence seeks to adduce details beyond what the Crown is seeking to adduce.
- The judge has discretion to decide whether the Stage I inquiry is conducted in writing, as an oral hearing, or both.
- The jury and the public must be excluded (s. 278.93 (32)).

- At this stage, the judge must assess whether the Crown has complied with his procedural obligations, and whether the evidence sought to be adduced is capable of being admissible (270.93 (4)).
- The judge may also use the Stage I inquiry to make full determination on whether the evidence in question constitute sexual history evidence that is presumptively inadmissible under s. 276 and the common law.

[13] Stage II:

- As with Stage I, the jury and the public must be excluded.
- The Complainant is not compellable at the Stage II hearing.
- It is not necessary for a personal affidavit from the Complainant to be filed.
- A Complainant does not have automatic standing to make submissions. Judges retained the discretion to grant Complainants standing as an exercise of their trial management powers.
- At this stage, using the factors enumerated in s. 276 (3) as a guide, the judge must decide whether the Crown has proven, on a balance of probabilities, that the evidence is relevant to an issue at trial, and that its probative value is not outweighed by its prejudicial effect.

[14] In this matter, both counsels agreed that the Stage I and Stage II hearings would be "collapsed" into one hearing. In doing so, it is agreed that the Crown has met the burden under sections 278.93(1) and (2) and I find this to be so. Both counsels submitted detailed briefs to the court with supporting case law and a brief hearing was held on January 23, 2026, which is a hearing contemplated under section 278.93(4).

[15] During that hearing, the Crown amended a portion of the application, specifically the evidence it was intending to seek to introduce at trial. Following those submissions, the matter was scheduled for decision today.

### **Should the Evidence be Admitted**

[16] It is clear from the decision in *Goldfinch, supra*, that evidence of a relationship and prior sexual activity engages s. 276 (1). Subsection 276 (4) provides that, for the purpose of s. 276 (1), sexual activity includes communication made for a sexual purpose, or whose contents is of a sexual nature.

[17] The Crown argues that the evidence of an intimate image of the Complainant was in the possession of the Accused at the time described herein, and that therefore evidence regarding the distribution of that image by the Accused to another falls within s. 276. I agree.

[18] Defence properly points out that a Complainant's prior sexual history is presumptively inadmissible, and that the *Criminal Code* has been refined over time to create a regime that prohibits entirely the use of other sexual activity evidence to support “twin myths” reasoning. This reasoning is the reliance on inferences that, based on the evidence of other sexual activity of the Complainant that they are

more likely to have consented to the alleged sexual activity forming the charge, or that they are less worthy of belief.

[19] The Crown argues that the evidence sought to be adduced at trial does not offend section 276 (1) and is relevant to an issue at trial. Specifically, the Crown argues the relationship between the Complainant and the Accused is relevant to the context in which the alleged sexual touching took place. The fact that it occurred between two people with a prior sexual history rather than between strangers the Crown argues is relevant. More specifically, the Crown argues that this evidence is relevant to provide proper context in assessing the nature of the acts complained of by the Complainant and her reaction to those acts.

[20] The Crown is clear in his submission that the application to adduce this evidence is not to introduce it to support any “twin myth” inferences. Specifically, the Crown does not intend put before the court any evidence regarding the image itself, or any evidence surrounding the creation of the image or the decision by the Complainant to share that image with the Accused.

[21] The Crown argues that the evidence sought to be introduced is narrow and focuses on the actions of the Accused, not on those of the Complainant. The

Crown argues that this narrows the purpose of the evidence to combat any risk of “twin myth” inferences that could arise from its admission.

[22] The Crown also argues that this evidence goes to the credibility of the Complainant and, specifically, her state of mind at the time of the alleged sexual touching. It is argued that if she is prevented from referencing history with the Accused and the sharing of the intimate image of her, this will diminish her credibility with respect to her description of feelings of fear and her reactions to the actions of the Accused.

[23] The Defence argues that admission of this evidence is not necessary for context or credibility. The Defence says that the evidence sought to be adduced is akin to admitting bad character evidence and oath helping with respect to the Complainant.

[24] The Defence also argues that if the evidence adduced by the Crown at the trial includes that the Accused whispered in the ear of the Complainant words to the effect that he still loved her, that testimony would alert the court to the fact that the parties were not mere strangers and would allow the Complainant to testify to the fact that she knew and was acquainted with the Accused.

[25] On the issue of credibility, the Defence refers the court to the decision of the Supreme Court of Canada in *R. v. T. W.W.* 2024 SCC 19 and in a particular paragraphs 27 and 28 as follows:

[27] Other sexual activity evidence may be admissible for issues of credibility or context, but the applicant must establish a specific use for this information that is permitted by the s. 276 regime. Goldfinch instructs that “[b]are assertions that such evidence will be relevant to context, narrative or credibility cannot satisfy s. 276(2)” (para. 51; see also para. 65), and the same caution applies to probative value. In order to be potentially admissible, the relevance and probative value of the evidence in each case must go beyond a general ability to undermine the Complainant’s credibility or to add helpful context to the circumstances of the case; it must respond to a specific issue at trial that could not be addressed or resolved in the absence of that evidence (Brown and Witkin, at pp. 379-81). The applicant also bears the burden of establishing that any such probative value is not substantially outweighed by prejudicial effect.

[28] Trial judges must guard against improperly widening the scope of when other sexual activity evidence should be admitted given that, as Karakatsanis J. noted in Goldfinch, “[c]redibility is an issue that pervades most trials” (para. 56); the same is true of the significance of context. Too broad an approach to credibility and context would cast open the doors of admissibility, overturning Parliament’s specific intention and this Court’s longstanding jurisprudence that evidence of other sexual activity will be admitted only in cases where it is sufficiently specific and essential to the interests of justice. Given the specific thresholds set by Parliament and their underlying objectives, something more is required to show that admission is justified. The applicant must demonstrate with particularity not only that credibility or context is relevant to an issue at trial but that, in the absence of the evidence, their position would be “untenable” or “utterly improbable” (see Goldfinch, at para. 68).

[26] The Defence also points to the decision of *Kinamore supra*, at paragraph 37 which addresses the question of discriminatory myths or stereotypes that can arise in such matters as follows:

[37] In addition, as I discuss below, it is possible that sexual history evidence may be used to evoke discriminatory myths and stereotypes about sexual assault Complainants that are different from the twin myths. While these myths and stereotypes can be raised by either party, the Crown may be more likely to evoke

some forms of flawed reasoning that are particularly disadvantageous to the Accused. These misleading lines of reasoning must be prohibited to ensure a trial that is fair for the Accused, the Complainant, and the broader public (Kruk, at para. 43).

### **Analysis and Decision**

[27] In determining whether evidence sought to be adduced by the Crown should be admitted into the trial, I must first determine the relevance, if any, of that evidence.

[28] At this stage of the decision, I find it to be relevant to an issue at trial. Specifically, it is relevant in providing context for the anticipated Complainant's evidence respecting what happened on the day in question when she was touched and spoken to by the Accused. Their prior history, and in particular the sharing of an intimate image of the Complainant by the Accused may inform the court respecting her state of mind when touched and spoken to by the Accused on that day.

[29] In finding this to be relevant, I have considered the various issues raised by the Defence and Crown, as well as the factors listed in s. 276 (3) of the *Criminal Code*.

[30] Regarding whether the evidence is being adduced for the purpose of supporting an inference of the "twin myths", I am satisfied that the Crown is not

intending to do so. The Crown has made clear its intent to adduce this evidence for the purpose of providing context and for other purposes which will be addressed later in this decision. It is very narrow in its scope and quite focused on the issue of the state of mind of the Complainant at the time she was touched and spoken to by the Accused on the day in question. I have no concern that this evidence is being sought to be adduced for the purpose of touching on the “twin myths” which is prohibited under s. 276 (1) of the *Criminal Code*.

[31] I must next turn to the question whether the probative value is not outweighed by the danger of prejudice to the proper administration of justice. In doing so, I must consider the factors set out under s. 276 (3) of the *Criminal Code*.

[32] The first of these is the interest of justice, including the right of the Accused to make full answer and defence. In this matter, the evidence sought to be adduced is not for the Accused, but rather for the Crown. That said, I find that the admission of the proposed evidence by the Crown will allow the court to properly understand the relationship between the Complainant and Accused and the context in which the allegations before the court took place.

[33] I do not, however, find that it is in the interests of justice to permit this evidence for any other purpose. Specifically, I do not find that this evidence

should be admitted to assist in assessing the credibility of the Complainant's testimony, only for the purpose of allowing her to establish her state of mind. In other words, it will not be permitted to bolster the credibility of the Complainant, only to provide context for the Complainant's state of mind at the time of the alleged incident.

[34] When I turned to the question of society's interest in encouraging the reporting of sexual assault offences, I find that permitting this evidence to be adduced by the Crown would support this interest. So long as the evidence adduced is permitted only for the narrow purpose set forward by the Crown and in this decision, I find it would encourage the reporting of sexual assault offences by permitting reference to a similar history between parties to explain the context of the alleged offence before court.

[35] Turning next to whether there is a reasonable prospect that the evidence will assist in arriving at just determination in the case, I find that it may do so. It is, of course, impossible for the court to make any definitive determination at this point as there is no evidence at trial before the court and the Accused has not had an opportunity to respond to any evidence that may be adduced. That said, I find that there is a reasonable prospect that this evidence will assist the court in this matter in arriving at just and appropriate decision.

[36] When considering the need to remove from the fact-finding process any discriminatory belief or bias, I have already addressed the issue of the “twin myths” concern. I have also addressed that I will not allow this evidence to be adduced to bolster the credibility of the Complainant, but simply to provide context for her state of mind. In making this determination, I am ever mindful of the comments in *Kinamore, supra*, at paragraph 37 regarding the possibility of such sexual history being "used to evoke discriminatory myths and stereotypes". These myths and stereotypes can apply to either a Complainant or an Accused. In considering whether to admit this evidence, I am very mindful of that risk and find it can be satisfied with appropriate judicial direction at trial.

[37] Respecting the question of a risk that the evidence that may unduly arouse sentiments of prejudice, sympathy or hostility in a jury, this is a judge alone trial. An experienced judge is well capable of setting aside any potential prejudice, sympathy or hostility, and to assess the matter based on the evidence before the court. I do not find this to be a relevant consideration in this matter.

[38] Respecting the potential prejudice to the Complainant's personal dignity and right of privacy, the Crown makes clear that the Complainant is aware of this application, has had independent legal advice concerning her interests and has not sought to be heard in the matter. Specifically, I understand that the Complainant

consents to the admission of this evidence if permitted by the court. I will respect that position. This finding also applies to the consideration of the right of the Complainant and every individual personal security and the full protection benefit of the law.

[39] I also note in respect of this factor that there is no intent of the Crown to adduce the actual intimate image, and this will minimize the risk to the Complainant. In considering whether to permit the Crown to adduces evidence, I mindful of the comments of the Supreme Court of Canada in *R. v. R.V.*, 2019 SCC 41 as follows:

[63] ...Thus, in weighing how the accused may respond to Crown-led evidence, the judge must ensure the accused is not denied the right to make full answer and defence.

...

[67] This does not, however, open a door to wide-ranging inquiries. The right to a fair trial does not guarantee the most favourable procedures imaginable...Even where the right to a fair trial requires cross-examination of the complainant, it does not entitle an accused to pursue the most expansive cross-examination. The scope of the permissible questioning must also be determined by balancing the accused's rights with the other rights and interests protected by s. 276(3), including:

- (f) the potential prejudice to the complainant's personal dignity and right of privacy; [and]
- (g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law.

The trial judge must therefore narrow the scope of the questioning to minimize the impact on the complainant, while maintaining the accused's ability to answer the charges.

[68] Inquiries into any individual's sexual history are highly intrusive. ....Both the length of the relevant time period and the degree of detail to be adduced impact the potential prejudice to the complainant: see, e.g., *R. v. Nkemka*, 2013 ONSC

2121, at paras. 10-20 (CanLII). Open-ended questioning about an individual's sexual activity, even during a particular timeframe, risks devolving into the very type of inquiry that s. 276 was intended to prevent. Caution must be exercised where the proposed inquiry captures a broad range of sexual activity and is limited only by a specified timeframe.

[69] Determining the boundaries of permissible cross-examination will always be a challenging and fact-specific task. In the present case, where the complainant maintained she was a virgin and had no boyfriend at the time of the assault, only limited questioning was appropriate. In other cases, more latitude may be warranted.

[40] This court will take every precaution to ensure the evidence sought to be adduced by the Crown as set out in this application is limited to the purpose identified herein.

[41] In this matter I find that with respect to the evidence sought to be adduced by the Crown, "it's probative value is not outweighed by its prejudicial effect." Thus, I will permit the Crown to adduce the evidence at trial pursuant to s.276(2) of the *Criminal Code*.

Timothy G. Daley, JPC