PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Wilson*, 2025 NSPC 39

Date: 20251113
Docket: Tru, No. 8838724
Registry: Shubenacadie

Between:

His Majesty the King

v.

Colin Wilson

TRIAL DECISION

Restriction on Publication: 486.4
Any information that will identify the complainant shall not be published in any document or broadcast or transmitted in any way.

Judge:	The Honourable Judge Del W Atwood
Heard:	July 2, 11, 17, 23, October 28, 29, 31, November 13, 2025 in Shubenacadie, Nova Scotia
Charge:	Section 151 *Criminal Code [Code]*
Counsel:	Jillian Fage for the Nova Scotia Public Prosecution Service
	Ronald Pizzo for Colin Wilson

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

By the Court:

Synopsis

[1] Colin Wilson is charged in information 875664 with touching RR for a sexual purpose, contrary to § 151 of the *Code* (case 8838723). The prosecution elected to proceed summarily, and Mr Wilson pleaded not guilty.

[2] Mr Wilson was a math-support instructor and RR was his student.

[3] The theory of the prosecution is that Mr Wilson touched RR four times: twice on the hand and twice on the leg. The incidents happened between 15 December 2023 and 12 January 2024, during math-support classes in a room used by Mr Wilson at a school where RR was a pupil. Two other students, KH and OP were present.

[4] The prosecution argues that the evidence of RR about the touching is supported by KH and OP, and is credible; the prosecution asserts further that the sexual purpose of the touching is clear from the circumstances. The prosecution responds to Mr Wilson's denial of the touching by countering that Mr Wilson should not be believed. The prosecution seeks a finding of guilt.

[5] The theory of the defence is that the touching never happened. While Mr Wilson admits fully that he led math-support classes with RR, KH and OP, he denies that he ever had any form physical contact with RR, as he was fastidious about not touching students. Defence counsel argues that the evidence should leave the court in a state of reasonable doubt whether Mr Wilson ever touched RR, and Mr Wilson should be found not guilty.

[6] The theories of counsel offer a binary believe-not-believe algorithm.

[7] Apex authorities inform the Court that it need not be that way. A trial can conclude and a court find that all witnesses—both prosecution and defence—presented believable accounts.

[8] That is the finding of the Court in this case. I found RR, KH and OP to be credible witnesses; their evidence describing Mr Wilson touching RR on four occasions during the math-support classes was credible.

[9] I found Mr Wilson's evidence that he did not touch RR equally worthy of belief.

[10] As a result of these findings, the Court is, as a matter of law, left in a state of reasonable doubt regarding an essential element of the § 151 charge against Mr Wilson—that is, whether he had intentional physical contact with RR. The Court

will record a finding of "not guilty" and dismiss the information in accordance with § 804 the *Code*.

[11] The following are the reasons of the Court.

Inventory of evidence--witnesses

[12] The following witnesses were called by the prosecution:

Name of prosecution witness	**Summary of testimony**
RR	*Direct examination* RR is the complainant. RR was 14 years old at the time of the trial. She was 12 years old and in Grade 7 over the 15 December 2023-12 January 2024 time frame covered by the charge. RR received extra help for math. Mr Wilson was her tutor. RR would meet Mr Wilson in a small office in the school she attended; her friends KH and OP received math help at the same time. The office had a 2-person couch with a square cushion beside it. There was a white board on the wall opposite the couch, a bookshelf with books, and a guitar. RR and her friends would work with base-10 plastic shapes, as well as with smaller, individual white boards. OP would always sit on the end of the couch that was closer to the bookshelf. KH would sit on OP's right, and RR always sat on the square cushion.

	There was a small table in front of the couch with the smaller white boards sitting on top. Mr Wilson sat at a desk with a wheelie chair. RR would write answers to math problems on her white board. During the first math-support class, RR showed Mr Wilson that she had gotten the answer right; he wheeled his chair toward RR and put his hand on top of her left hand, which was resting on her left thigh at the time. It lasted about three seconds, until RR removed her hand and held her white board. After that, class continued normally. RR's mind was blank. She did not want Mr Wilson's hand on hers. The math-support sessions would last 10-to-15 minutes—maybe one went 30 minutes. RR attended four classes with Mr Wilson. KH and OP were present for all of them. For the second class with Mr Wilson, RR got pulled out of her normal math class. During this class, Mr Wilson touched her hand just as he had done during the first class. It lasted about three seconds, until RR moved her hand away. It made her feel a bit uncomfortable. During the third class RR attended, Mr Wilson placed his hand on RR's left leg, closer to her knee. RR was wearing leggings that day. RR estimated it lasted five seconds; she crossed her legs, and Mr Wilson moved his hand. His hand was just resting; there wasn't any pressure, and he didn't make any motion with his hand. RR felt uncomfortable and had a weird feeling in her stomach.

	During the fourth class RR attended, Mr Wilson placed his hand on her left thigh again; and, again, RR crossed her legs. She was wearing leggings. After this class, RR went to one of her teachers, Ms Kincade, and asked to be taken out of the class as she felt uncomfortable. RR did not want to be touched, and did not agree to it. RR knew that she could talk to a staff member she knew as "Ms Bella". RR told Ms Bella what had happened. Ms Bella was shocked and said she would handle it. RR never saw Mr Wilson touching KH or OP. She believed Mr Wilson always touched her with his right hand; she did not notice anything unusual about his hand. RR went to Ms Kincade as "we got creeped out by him and we said we don't want to be in his room any more." RR said she was scared because he didn't want it to get any worse. *Cross-examination* RR was taken mainly out of math class to attend sessions with Mr Wilson. RR agreed that Exhibit 3 (a diagram prepared by Mr Wilson of the room where she, KH, OP and Mr Wilson would meet) looked right, although everything was much closer in the actual office. RR agreed that she would use base-10 blocks to figure out math problems. When RR talked to Ms Kincade, it was break time. RR told Ms Kincade she didn't feel comfortable in the room any more; she did not tell Ms Kincade about Mr Wilson touching her.

	RR had one more support class with Mr Wilson after that, and then finally got taken out. RR agreed that she, KH and OP would talk about what had happened—she talked mostly to KH, about how glad they were to be out of the room. RR talked to Ms Bella maybe two-and-a-half weeks after getting out of the room; it was definitely not 30 April 2024. RR denied telling Ms Bella that she had already disclosed what had happened to Ms Kincade and that Ms Kincade had done nothing about it.
KH	*Direct examination* KH was 12 years old and in Grade 7 when she attended math-support classes with RR and OP. Ms Kincade introduced her to Mr Wilson for math help. KH attended math-support class in a little office near Ms Kincade's class room. It was only OP and RR who were with her. All three would sit on the couch: RR on KH's left, and OP on her right. There was a circular table that was lower to the floor. The first time KH saw Mr Wilson touch RR, it was on her upper thigh, below her knee. "He seemed really close." It was RR's left knee with his right hand. KH thought Mr Wilson was kneeling beside RR. The touching lasted 30 seconds to a minute. In other classes, KH was Mr Wilson touch RR two times on her shoulder.

	KH told Ms Bella. She didn't tell Ms Kincade, other than that RR was uncomfortable in math support and wanted to leave. After RR left math support, KH and OP continued for about another month and a half. *Cross-examination* Mr Wilson would use the large whiteboard on the wall to write out questions, and RR, KH and OP would use the base-10 blocks and the smaller whiteboards to figure out the answers. KH told Ms Bella what had happened one or two weeks after RR left the class. RR and KH would continue talking about what had happened, but they would not include OP.
OP	*Direct examination* OP was in the same math-support class as RR and KH. She was 12 years old at the time. She would be taken out from French and Social Studies for math support. OP would sit on the couch in the class used for math support, with KH, also on the couch, to her right, and RR on a cushion, to her left. Mr Wilson would sit really close to RR, "touch her shoulder, arms and everything and lean really close." Mr Wilson would pat RR's shoulder, or her arm, if she got a question right, and tell her, "Good job." He would pat her knee sometimes and would rest his hand a little longer. It would just be a couple of seconds. It did happen quite a few times.

	Mr Wilson did not touch RR's upper thigh, but not right on the knee; it was in the middle. RR wore leggings or sweat pants, crop tops, sweaters, hoodies or t-shirts. Mr Wilson never touched OP. *Cross-examination* OP agreed she never told Ms Bella about what had happened. OP never referred to Mr Wilson as her "math bestie". OP said she was able to remember a good amount of things as there were side conversations.
Bella Pownall	*Direct examination* Ms Pownall is a Child/Youth Care Practitioner with the Department of Education. As of the time of the trial, she had been four years on the job. Ms Pownall works with emotional-learning groups and provides support to children. She connects families with outside resources. RR approached her 30 April 2024 to talk about Mr Wilson. RR, KH and OP were upset about the math class and the teacher not helping. Boys were calling RR names. RR said that Mr Wilson had touched her. At this point, the prosecution sought to explore the details of what RR had disclosed. This required the intervention of the Court, as there is a general exclusionary rule applicable to prior consistent statements: *R v Dinardo*, 2008 SCC 24 at ¶36, [2008] 1 SCR 788; *R v Stirling*, 2008 SCC 10 at ¶ 5, [2008] 1 SCR 272; *R v Evans*, [1993] 2 SCR 629 at ¶ 32; *R v Laing*, 2017 NSCA 69 at ¶ 70-73;

	R v LaPierre, 2022 NSCA 12 at ¶ 110. The prosecutor did not identify any of the recognized exceptional categories that would render the evidence admissible. *Cross-examination* Ms Pownall agreed that OP referred to Mr Wilson as her "math bestie".
Amanda Kincade	*Direct examination* Ms Kincade taught Grade 7 Math, Science and Health at the school attended by RR, KH and OP. Mr Wilson was a math-support teacher; he had asked her to identify students who would benefit from extra math help. RR, KH and OP were Ms Kincade's students; she gave their names to Mr Wilson. RR eventually approached her and asked if she could stop attending math support; Ms Kincade said that she would let Mr Wilson know. *Cross-examination* Ms Kincade recalled that Mr Wilson was not to take students needing math support out of the regular math class.

[13] After the close of the case for the prosecution, Mr Wilson chose to testify.

Name of defence witness	**Summary of testimony**
Colin Wilson	*Direct examination* Mr Wilson obtained a BEd in 2014, and an MEd in 2023.

	He taught in Alberta for one year, then began doing substitute teaching with the Chignecto Central Regional School Board. After that, he transitioned into a private school to build his resume. After a number of teaching assignments, Mr Wilson began working as a math-support teacher during the 2023-2024 academic year. He was eventually tasked to work with students in Amanda Kincade's math class, including RR, KH and OP. Mr Wilson would never take students out of gym (gym being the #1 reason kids typically attend school) or math class (counterproductive to take students out of math class for math support). During math-support class, students would sit wherever they wished to sit. Mr Wilson confirmed the accuracy of Ex 3, a diagram of the office used for math-support classes. He confirmed the accuracy of Ex 6, his 6-day cycle schedule. He confirmed the accuracy of Ex 5, and email sent by the school board to the RCMP investigator listing the school locations of his math-support classes between 11 September 2023 and 25 June 2024. He confirmed the accuracy of Ex 1, the attendance record and lesson plans for the math-support classes attended by RR, KH and OP. Mr Wilson described the class routine he would typically follow with RR, KH and OP. He would group two of the students together and work with the third one. He would write a question on the large white board on the wall.

	While students were working with the base-10 blocks or their individual white boards, he would wheel his chair over to the bookshelf next to the white board and look at them, rather than positioning himself beside them. Mr Wilson eventually heard that RR had other stressors in her life and wanted out of math-support class. Mr Wilson never touched RR's hand or leg. He had no specific recollection of any particular math-support class. He found out about the allegation that had been made against him in early June 2024. *Cross-examination* Mr Wilson agreed that he had taught, in total, 150-200 math-support sessions at the school attended by RR, KH and OP over the course of the 2023-2024 academic year. He had taught about 800 session in all the schools he covered. Mr Wilson agreed that he would close the door of the office he used for math support with RR, KH and OP and keep it closed. Mr Wilson stated that he had two distinct memories of speaking with RR while she was seated on the couch; he recalled standing by the large whiteboard on those occasions. The office he used with RR, KH and OP was actually a very small space. Mr Wilson agreed that there would have been times when he stepped into the open space between the computer desk and chair and the round table, but only very rarely. He would stand mostly next to the bookshelf by the large whiteboard.

	Mr Wilson stated that he did not specifically recall not ever walking toward the ottoman next to the couch, Mr Wilson agreed that he would sometimes roll dice on the small table in the office as part of a day's lessons. Mr Wilson recalled one session when OP and KH were joking and acting silly, and RR gave him a look. Mr Wilson remembered RR as being very quiet. Mr Wilson knew for a fact that he did not touch any student "that way." Mr Wilson stated that he had been unaware that RR had felt uncomfortable in his class as he didn't know her feelings. Mr Wilson testified that RR seemed like an average student.

Inventory of evidence—exhibits

Exhibit No	***Tendered by (P=prosecution; D=Defence)***	***Description of exhibit***
1	P	Math-support class attendance record.
2	D	Diagram of math-support classroom (identification exhibit).
3	D	Exhibit 2 following authentication.
4	D	Small white boards and Base-10 blocks used by students.
5	D	Email listing Mr Wilson's assigned schools.
6	D	Mr Wilson's teaching schedule.

A significant charging-decision error

[14] Mr Wilson was charged initially by the RCMP with an additional sexual-exploitation count under § 153 of the *Code* (case 8838723, dismissed on the motion of the prosecution on 2 July 2025); as with the § 151 count, RR was identified as the complainant.

[15] When first assigned this case as the trial judge at the 13 May 2025 pretrial conference, I raised with the prosecutor (not Ms Fage) the apparent incongruity of concurrent charges of § 151 and § 153 involving the same complainant and the identical short-interval date range. The incongruity arises as an essential element of a § 151 charge is that the complainant must be under the age of 16 years, whereas an essential element of a § 153 count is that the complainant must be 16 years of age or more but under the age of 18 years.

[16] The prosecutor informed the Court that RR was 12 years of age for the entire time of the alleged offences.

[17] Accordingly, the § 153 charge was not viable, and should never have been laid.

[18] Section 153 is not a new provision: it was brought into the *Code* in 1989. Back then, it criminalized the sexual exploitation of persons between 14-17 years

of age. The current 16-17-year age range came into effect 1 May 2008 though SC 2008 c 6 s 54, in force under the authority of SI/2008-34.

[19] From this, it is clear that police charged Mr Wilson with a § 153 offence—carried by the prosecution for seven appearances—when there was precisely no prospect at all of him ever being convicted of that charge.

[20] This error is not a "near miss", and should be deeply concerning to the public and to all concerned with the proper functioning of our criminal-justice system. Although Nova Scotia is not a charge-screening province (and so police may lay informations without clearance from prosecutors), there were several potential inflection points when the prosecution could have withdrawn the § 153 count. Full credit to Ms Fage for stepping in and seeking to have the charge dismissed on her first appearance after she had assumed carriage of the case; however, it should not have taken as long as it did for the prosecution service to act.

[21] Having said all this, I take the point made by the prosecutor that this mistake should not affect the Court's assessment of the credibility of witnesses called by the prosecution. I agree with that proposition. However, the Court must ensure

that the faulty decision making inherent in the decision to charge Mr Wilson with a § 153 offence not infect the judgment of the Court.

Adequacy of the investigation

[22] Compounding the charge-laying problem is the live issue whether the case against Mr Wilson was investigated adequately.

[23] This was revealed during the hearing of a defence application brought under the provisions of § 278.2 of the *Code* for production of a third-party record. The record in question was a file compiled by the school board that employed Mr Wilson; it contained information gathered by a school-board staff member who conducted an internal investigation into the allegation made by RR. I shall refer to it as the "school-board file". The staff member who conducted the internal investigation did not testify, either during the production application or during the trial.

[24] A case-management judge had scheduled a full seven days of pre-trial appearances to deal with the multi-stage-production-and-admissibility proceedings that would typically be required to address applications of this sort, given the labyrinthine nature of the § 278.2 process.

[25] Thanks to the good collaboration among the prosecution, defence, and counsel assigned to represent the privacy interests of the witnesses, one appearance was all that was needed to conclude the matter.

[26] After reviewing the school-board file during the stage-one process, I determined that none of it was a privacy-protected "record" (as that term is defined in § 278.1 of the *Code*). The file contained an attendance sheet and lesson plan that had been completed by Mr Wilson. It contained handwritten notes of the school-board member who had been tasked with carrying out the investigation; the notes laid out neutral details which did not implicate any privacy interests. Finally, the school-board file contained multiple copies of a chain of email exchanges between board staff and the RCMP investigator, all of which would likely have been included in the disclosure package provided by police to the prosecution.

[27] One critical piece of information in the school-board file was that it identified OP as having been in the math-support classroom with RR and KH during sessions with Mr Wilson. It would appear that the identity of OP was not known to the prosecution prior to the Court ordering that the school-board file be produced to counsel.

[28] It is remarkable that the police investigator in this case did not seek a production order to obtain a copy of the school-board file. The email exchange between board staff and the investigator satisfies me that the investigator must have known of the existence of the school-board file. The failure to seek production led to a significant delay in identifying OP as a material witness.

[29] Further, had the investigator secured production of the school-board file and disclosed it to the prosecution, I have every confidence that the prosecution would have come to the same conclusion as the Court: that the file was not a protected record and could be disclosed to counsel for Mr Wilson without the need for a § 278.2 application. By eliminating the need for § 278.2 hearing dates, Mr Wilson's trial could have been completed much earlier.[1]

[30] Another conspicuous investigative omission in this case was the failure by police to collect scene photography. This would not have been an onerous assignment; rather, it would have involved merely going to the school where RR

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[1] It used to be the case that third-party records of this sort would be routinely collected by police through the use of production orders under § 487.014 of the *Code*. Lately, however, certain policing services seem to avoid altogether going after any kind of third-party record, leaving it to accused persons to seek production under § 278.2. This does not appear to be a best practice, as it deprives not only accused persons, but also the prosecution, of potentially informative and relevant information; plus, it engenders delay.

had her math-support classes with Mr Wilson and taking pictures of it and taking measurements of dimensions.

[31] As scene photography was not done, the only real evidence of the configuration of the room was a diagram drawn by Mr Wilson (Exhibit 3). In closing argument, the prosecutor questioned the accuracy of the diagram, as Mr Wilson was the one who drew it, and, as the accused person, he had a strong interest at stake in the case. The Court takes the point. However, there are two rebuttals: first, RR, KH and OP testified that the diagram looked accurate; second, if the prosecution wanted an accurate representation of the alleged crime scene, the power to get one was in the hands of the state—police could have taken pictures of it.

Elements of a § 151 sexual-interference offence

[32] Defence counsel admitted to the location of the alleged offence as being within the Province of Nova Scotia, and that it was Mr Wilson in the math-support room with RR, KH and OP.

[33] As a result, the remaining elements of the sexual-interference charge against Mr Wilson are:

- RR was under the age of 16;

- Mr Wilson believed RR was under the age of 16;
- Mr Wilson intentionally touched RR directly or indirectly (see, *e.g., R v Beamish*, 1991 CanLII 7827 (SKQB); and
- Mr Wilson intentionally touched RR for a sexual purpose.

[34] The last element confirms that § 151 of the *Code* describes a specific-intent offence: it is an element of the offence that an accused person must have had a sexual purpose in intentionally touching a child: *R v DMG*, 2022 NSCA 42 at ¶ 19; *R v NFDW*, 2021 NSCA 91 at ¶ 44; *R v BJT*, 2019 ONCA 694 at ¶ 37; *R v GB*, 2009 BCCA 88 at ¶ 24; *R v Scullion*, 2009 ABCA 291 at ¶ 3.

[35] Proof of lack of consent is not an essential element in this case, given § 150.1 of the *Code*.

[36] Mr Wilson is not raising either a mistake-of-age or a no-sexual-purpose defence. As set out in the preceding synopsis, Mr Wilson's defence is that the touching never happened.

W(D)

[37] *R v W(D)*, 1991 CanLII 93 (SCC), [1991] 1 SCR 742 [*W(D)*] is said to be the prototype case on analyzing evidence in a criminal trial. According to the

counter on CanLII.org, it has been cited in published decisions in Canada over fifteen thousand times.

[38] Appellate jurisprudence reveals a persistent focus on sequence of analysis of evidence. This arise from the fact that the first step in the analytical sequence proposed in *W(D)* begins: "First, if you believe the evidence of the accused, obviously you must acquit." (SCR at 758).

[39] A contrasting approach is found in *R v JCH*, 2011 NLCA 8 at ¶ 12-14: Rowe JA (now of the SCC) was of the opinion that trial judges ought to assess the evidence of the prosecution first:

> The danger in considering the evidence of the accused first and determining whether it is worthy of belief before considering the Crown evidence is that it may induce the judge to place too great an emphasis on the remaining evidence, i.e. the Crown evidence, without carefully scrutinizing that evidence in the context of the evidence as a whole to determine whether it can support the charges to the standard of proof required. In effect, it creates a tendency for the judge to consider the evidence in an "either/or" way, thereby departing from the required burden of proof.

[40] This fixation on the sequence-of-analysis piece demonstrates the problem of treating *W(D)* as a form of automated reasoning, and overlooks the fact that credibility and reliability assessments are context-specific and multifactorial: they do not operate along fixed lines and are more of an art than a science: *R v Kruk*, 2024 SCC 7 at ¶ 81 [*Kruk*].

[41] Furthermore, in *R v Vuradin*, 2013 SCC 38, [2013] 2 SCR 639 [*Vuradin*], the SCC held that the order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remain the central consideration. See also *R v Gerrard*, 2022 SCC 13 at ¶ 2 [*Gerrard*].

[42] It is important to recall that intended audience for *W(D)* is the lay jury; further, the precise formulation of the *W(D)* questions is not beyond criticism—the SCC said so itself: *R v JHS*, 2008 SCC 30, [2008] 2 SCR 152 at ¶ 9-13.

[43] What is more important than the lockstep application of the *W(D)* formula is the proper application of its underlying values.

[44] Additionally, trials are governed by the principle that the prosecution is not required to prove beyond a reasonable doubt each evidence fragment put before the court: *R v JMH*, 2011 SCC 45 at ¶ 31; *R v Campbell*, 2015 ABCA 70 at ¶ 44; *R v BD*, 2011 ONCA 51 at ¶ 96.

Evidence of youthful witnesses

[45] RR, KH and OP were all 12 years of age when they attended math-support class with Mr Wilson. Fewer than two years have passed since then.

[46] Trial courts should not impose the same exacting credibility and reliability standards upon young people as they do with adult witnesses: *R v W(R)*, 1992

CanLII 56 (SCC), [1992] 2 SCR 122 at ¶ 26 [*W(R)*]. The fact that young people might not attend to fine details when observing, and later asked to recall traumatic events, does not mean that they misconceived what had happened to them: *W(R)* at ¶ 24.

[47] In fact, all three young people were articulate and thoughtful witnesses.

[48] While it is true that cross-examination of children can be conducted in a way as to be intentionally confusing, that did not happen in this case. Defence counsel's questions, while incisive and detailed, were age appropriate. I would make the same observation of the direct examination. I would commend both Ms Fage and Mr Pizzo for this.

Motive to fabricate

[49] In *Gerrard* at ¶ 4, the SCC drew a distinction between a proven absence of a complainant's motive to fabricate and the mere absence of evidence of a motive. In other words, absence of evidence is not evidence of absence. Common sense suggests that a witness may be more truthful when the witness does not have a reason to lie. Common sense and judicial experience suggest also that proof of a motive or proof of a lack of it will not come from direct evidence; it will be deduced from the circumstances.

[50] In cases when there is no apparent motive for a complainant to fabricate an account, but the evidence does not affirmatively establish the absence of a motive, a trier must recognize that it would be dangerous to infer from an apparent lack of motive to fabricate that a complainant must be telling the truth.

[51] Furthermore, the Court must not impose a burden of proof on an accused person to establish that a complainant would have a motive to lie: *Gerrard* at ¶ 4; *R v Riche*, [1996] NJ No. 293 at ¶ 15 [*Riche*]; *R v Ignacio*, 2021 ONCA 69 at ¶ 37-60; *R v Wallace*, 2021 NSPC 65 at ¶ 59 [*Wallace*].

Stereotypical reasoning and generalized assumptions

[52] The adjudication project requires that trial judges be alive to authentic legal controversies, and be prepared to grapple with evidentiary conflicts when they might have a bearing on ultimate issues. In trials involving allegations of sexual violence, the controversies that tend to gain the most traction involve assumptions about human behaviour; it is a subject matter that has been the focus of substantial intermediate-appellate and apex analysis.

[53] Judges are permitted to rely on logic, reason and common sense in assessing witness credibility: *R v ARD*, 2017 ABCA 237 at ¶ 8-9, aff'd 2018 SCC 6; cited with approval in a minority concurring opinion in *Kruk* at ¶ 186.

[54] *Kruk* came to the SCC following a number of intermediate-appellate decisions which struck down convictions in sexual-violence trials; the reversals in those cased were based on trial judges supposedly having relied on ungrounded common-sense assumptions, to the detriment of the accused persons in those cases.

[55] According to the intermediate-appellate-court-invented "rule", there was seen to be an equivalency between, on the one hand, prohibited reasoning based on myths and stereotypes about victims of sexual violence (identified first in *R v Seaboyer*, 1991 CanLII 76, [1991] 2 SCR 577 at 604 *et seq*; later codified in § 276 of the *Code*; and then developed in a host of later cases, the most recent from the SCC being *R v Kinnamore*, 2025 SCC 19) and, on the other, supposedly ungrounded common-sense assumptions about human behaviour that ended up being detrimental to the cases of persons charged with sexual violence.

[56] In the majority opinion in *Kruk* at ¶ 24 (there was one concurring minority opinion), the SCC rejected the equivalency argument, and found that it disregarded the "distinct nature of myths and stereotypes" that are unjustly applied to sexual-violence complainants. The majority went on, and observed at ¶ 26-28 that the equivalency argument worked to transform all factual generalizations rendered by trial courts into errors of law, thus imposing a false symmetry to the circumstances of accused persons.

[57] Unlike generalizations about the circumstances of persons who have been charged, myths and stereotypes about victims reflect what the majority described at ¶ 38 as "inaccurate, outdated, and inequitable social attitudes . . . [that] impeded the equal treatment of sexual assault complainants and, hence, the overall fairness of trials."

[58] Efforts to eliminate myths and stereotypes about victims of sexual violence (both in statute and the common law) do not create any "special benefits in law for complainants in sexual assault cases": ¶ 44. Rather, they "remove discriminatory barriers", "level the testimonial field", "and ensure the truth-seeking function of the trial is not distorted."

[59] And so the SCC did not recognize trial-court reliance on ungrounded common-sense assumptions as constituting errors of law having the same effect as reliance on prohibited myths and stereotypes.

[60] Nevertheless, while there are now, as a result of *Kruk*, constraints on appellate review regarding trial-level generalizations about human behaviour—generalizations that do not engage the prohibited myths and stereotypes—this does not eliminate the need for trial judges to exercise caution, as unrestrained assumptions about human behaviour may still lead to palpable and overriding

error: *Kruk* at ¶ 3 and 52. A key point in *Kruk* is that trial courts should avoid drawing extravagant inferences from ambiguous, uncontroversial or neutral facts.

Sexual interference and sites of privacy

[61] Mr Wilson is alleged to have touched RR when there were two other students present.

[62] The Court must be alert to the improper generalization that sexual offences happen only in places of privacy

[63] At least one academic author has suggested that it is actually a prohibited myth—much as the twin myths about complainant credibility and consent—to base a judgment on the assumption that sexual violence happens only in places of privacy: Lisa Dufraimont, "Myths and Stereotypes in *R v Spicer*" (2023), 87 CR (7th) 75-76; and see *R v Spicer*, 2023 ONCA 232 at ¶ 29. I agree with the conclusion of the author.

Sexual offences and delayed reporting

[64] The doctrine of recent complaint was a court-created stereotype that required a complainant to immediately report a sexual assault or face an adverse inference regarding credibility: *Kribs et al v The Queen*, 1960 CanLII 7 (SCC), [1960] SCR

400 at 405. This myth was abrogated statutorily by SC 1980-81-82-83, c 125, s 19, found now in § 275 of the *Code*.

[65] The failure of a complainant to immediately report being sexually abused cannot be treated as an automatic credibility deficit or as the basis for an adverse inference: *R v DD*, 2000 SCC 43 (CanLII), [2000] 2 SCR 275 at ¶ 63 [*DD*]. There is no inviolable rule on how people who are the victims of trauma, such as sexual assault, will behave: *DD* at ¶ 65; *R v Koge*, 2022 NSPC 37 (CanLII) at ¶ 86. Some might report immediately being sexually assaulted; others might wait, for a wide variety of reasons. Waiting might have to do with knowing that the trial process can be humiliating and degrading for victims of sexual violence: *R v JJ*, 2022 SCC 28 (CanLII) at ¶ 1; *R v Mills*, 1999 CanLII 637 (SCC), [1999] 3 S.C.R. 668 at ¶ 119.

[66] RR acknowledged that, when she talked to Ms Kincade about being taken out of math-support class, she did not mention that Mr Wilson had touched her; her explanation was, essentially, that she her focus was on not having to be in the class any more. According to Ms Pownall, it was on 30 April 2024 that RR disclosed that Mr Wilson had touched her; this was almost 4 months after the last math-support class RR had attended.

[67] Regardless of RR's reasoning, it is clear that the Court must not treat as an automatic credibility deficit the fact that RR did not reveal to Ms Kincade that Mr Wilson had touched her, or that she waited until 30 April 2024 to tell Ms Pownall.

The weaponization of the prohibition against myth-based or stereotypical reasoning

[68] To repeat, trial courts must never treat circumstances of delayed disclosure, or of an alleged sexual offence having occurred in the presence of others, as automatic credibility deficits: see *R v Seaboyer; R v Gayme*, 1991 CanLII 76 (SCC), [1991] 2 SCR 577 at 650-659.

[69] However, it is not an error to arrive at a factual conclusion that may logically reflect a stereotype where that factual conclusion is not drawn from a stereotypical inference but is, instead, based on the evidence: *R v JC*, 2021 ONCA 131 at ¶ 30.

[70] While delay in disclosure, by itself, will never operate as an automatic credibility deficit (*R v DD*, 2000 SCC 43 at ¶ 63 [*DD*]), the timing of a complainant disclosing a sexual offence is a circumstance that may be considered in the factual mosaic of a particular case: *DD* at ¶ 65. Further, as held in *R v SG*, 2022 ONCA 727 at ¶ 43, *DD* does not stand for the proposition that timing of disclosure is irrelevant to credibility. Rather, any issues of timing of disclosure must be assessed in the context of the trial evidence as a whole.

[71] That is precisely what defence counsel sought to have the Court do in this case with the evidence regarding the timing of the disclosure RR made to Ms Pownall. Defence did not invoke a prohibited stereotype in doing so.

Analysis of the evidence of RR, KH and OP

[72] RR, KH and OP were articulate, fluent and composed witnesses.

[73] They answered questions posed to them on direct examination and cross examination without appearing to be evasive or reticent. I did not consider any of them to have been materially challenged or impeached on cross-examination.

[74] Any apparent inconsistency in their testimony I attribute to the normal operation of adolescent memory. I would apply this to the discrepancy in their evidence about which parts of RR's body Mr Wilson allegedly touched (KH said it was RR's shoulder; OP said it was RR's shoulder and arm; RR said Mr Wilson touched her on the hand and leg). I would apply it also to RR's evidence that she was once pulled out of her regular math class to attend math support; Ms Kincade's evidence satisfies me that RR would not have been taken out of math class to attend math support. I treat this as an honest mistake made by RR that does not impact her credibility or reliability.

[75] RR, KH and OP acknowledged talking to each other about what had happened during math-support class, although OP seemed to have been less involved in those conversations. There is no evidence before the Court that would allow me to draw an inference that they colluded in making up a false complaint against Mr Wilson.

[76] In the circumstances of this case, given the limited evidence of how RR, KH and OP interacted with Mr Wilson and their conversations about him following math-support class, I conclude in this case that they harboured no apparent motive to fabricate a complaint of sexual interference against him; however, I would go no further than that, applying the inference-restraint principles in *Gerrard*.

Analysis of the evidence of Mr Wilson

[77] Mr Wilson's evidence coincided with RR, KH and OP on many points: he acknowledged working with them during math-support class; his evidence about the time frame and frequency of the classes matches theirs.

[78] Mr Wilson's evidence that the students were never taken out of the regular math class to attend math support makes sense.

[79] Regarding the allegation that he touched RR, Mr Wilson's evidence was a flat denial.

[80] I dealt with the issue of the evaluation of a bare denial in *R v MacNeil*, 2024 NSPC 40 at ¶ 45. When an accused person, such as Mr Wilson, denies wholly having committed a criminal act, that denial is sometimes regarded askance as a "bald denial", or a "bare denial", or as "self-serving evidence". An uncomplicated and straightforward denial must not be treated dismissively based on a generalized assumption that it is inherently less worthy of credit. This is because it is difficult for anyone to prove a negative: *R v AJS*, 2011 ONCA 566 at ¶ 17. A simple denial is, in fact, consistent with the presumption of innocence, and to reject it solely as self-serving would undermine that constitutionally protected right: *R v Titong*, 2021 ABCA 75 at ¶ 9-10. As held in *Kruk* at ¶ 60, it is improper to discount the credibility of accused persons on the basis that they will say anything to protect themselves from criminal penalties.

[81] I found Mr Wilson's denial believable. While he might not have had a present memory of each of the classes with RR in attendance, he testified that he had a determined practice not to touch students; he was confident that he had not touched RR. I did not consider Mr Wilson's denial to have been shaken on cross-examination. Yes, Mr Wilson conducted hundreds of math-support classes over the 2023-2024 academic year; I take the point made by the prosecutor in closing that he would not have a present memory of each one of them, and so how can he

be so sure he never touched RR? However, a rebuttal of that argument would be to point out the way evidence is assessed in cases when police witnesses—called upon to recall the details of, say, an arrest—testify about the investigative and operational steps that they "always" take, or improper actions they would "never" do, in dealing with a detainee. Witnesses can testify to routines that they have memorialized, and that evidence may be found to be credible and trustworthy, even it the witness might not have a present memory of a specific, individual transaction. Just so with Mr Wilson's evidence that he would never touch a student.

[82] As I believe Mr Wilson's denial—as much as I believe RR, KH and OP's accounts—the court is, as a matter of law, in a state of reasonable doubt, and Mr Wilson is acquitted. The charge is dismissed.

Alternative route to an acquittal

[83] A trial court should attend to the evidence, and not seek to rule on issues unnecessary to the determination of a case. To put it succinctly, courts should avoid what-if reasoning.

[84] In this case, I feel that it would be warranted for the Court to review an alternative legal route to an acquittal.

[85] Even if the Court had rejected Mr Wilson's evidence—or, say, he had not testified at all—and found beyond a reasonable doubt that he had touched RR in the way she described it (two momentary touches on the hand and two on her leg, apparently recognizing when she had answered math questions correctly) I would have found it dangerous to infer from that evidence that the touching was for a sexual purpose, based on those circumstances.

[86] The Court is indebted to counsel for their skilled advocacy.

Atwood, JPC