

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. D.F. M., 2008 NSSC 312

**Date:** 20080610

**Docket:** CRT 282691

**Registry:** Truro

**Between:**

Her Majesty The Queen

v.

D. F. M.

Defendant

**Restriction on publication:** PUBLISHERS OF THIS CASE PLEASE NOTE THAT THERE IS A PUBLICATION BAN SUBJECT TO A s.486(3) ORDER DIRECTING THAT THE IDENTITY OF THE COMPLAINANT AND ANY INFORMATION THAT WOULD DISCLOSE HER IDENTITY SHALL NOT BE PUBLISHED IN ANY DOCUMENT OR BROADCAST IN ANY WAY.

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**DECISION**

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**Editorial Notice**

Identifying information has been removed from this unofficial electronic version of the judgment. An asterisk indicates that information has been removed to protect the complainant's identity.

**Judge:** The Honourable Justice John D. Murphy

**Heard:** May 20, 21, 22, 23, 26, 27, 28, and June 9, 2008 in Truro, Nova Scotia

**Written Decision:** October 27, 2008

*{Oral decision delivered June 10, 2008}*

**Counsel:** Mr. Richard M. Hartlen, for the Crown  
Mr. David J. Mahoney, for the Defendant

**By the Court:**

[1] The charges against Mr. M. are contained in a two-count indictment. The first count:

THAT HE did, being in a position of trust or authority towards ADF, a young person did for a sexual purpose touch directly the body of ADF with a part of his body contrary to Section 153 of the **Criminal Code of Canada**.

[2] Secondly:

On or about/between the 7<sup>th</sup> day of July, 2005 and the 1<sup>st</sup> day of January, 2006 at or near N. and D., Province of Nova Scotia, that he did commit a sexual assault on ADF, contrary to Section 271 of the **Criminal Code of Canada**.

[3] There is a ban on publication, as the media know, with respect to anything which would name or otherwise identify the Complainant, or any information that might lead to her identification.

[4] I will not be reviewing all of the evidence in detail. Although I will only mention some of the evidence, I have considered all of the testimony. The fact that I may not refer to a particular witness' evidence or testimony about a certain aspect of the circumstances does not mean that I have not considered that evidence.

[5] Mr. M. acknowledges that if A.D.F.'s version of events is accepted, then the charges have been proved. The Accused also acknowledges that there was a position of trust and authority between A.D.F. and him.

[6] The Defence's position is that the events did not occur as alleged by A.D.F. There is a denial of any conduct amounting to touching as outlined in s.153 of the **Criminal Code**, or sexual assault pursuant to s.271 of the **Criminal Code**.

[7] Determining the outcome of this case depends on whether the Crown has proved all the elements of the offences beyond a reasonable doubt. That burden is on the Crown throughout the entire proceeding. There was conflicting evidence in this case. The version of events described by A.D.F. and described by Mr. M. were different. The result of this case, as the parties have acknowledged in their submissions, hinges on credibility; it depends upon what evidence is accepted from

the principal witnesses. I emphasize that it is not a matter of whether the Court believes one witness or another witness. That is not the test. Rather the test is whether, based on all of the evidence, the Crown has proved its case beyond a reasonable doubt.

[8] I am going to highlight the authorities to which the parties referred, and which I consider to be the key relevant cases on the burden of proof and on the issue of credibility. First, there is **R. v. W.(D.)**, [1991] 1 S.C.R. 742, which prescribes a three-part analysis dealing with a situation where an accused testifies and the accused's evidence contradicts that of the complainant. The applicable principle is: firstly, if the accused's evidence is believed, if I accept the accused's statement that he did not commit the offence, then he must be found not guilty; secondly, even if the Court does not believe the accused's evidence, if the accused's evidence leaves the Court with a reasonable doubt about his guilt, then he must be found not guilty; thirdly, even if the accused's evidence does not leave the Court with a reasonable doubt about his guilt, the Court may convict him only if the rest of the evidence that the Court does accept proves his guilt beyond a reasonable doubt.

[9] Assessing evidence is not a credibility contest. It is not a matter of which witness is believed, and who is disbelieved. The Court is able to accept some or all of a witness' evidence. Those principles are highlighted by the Supreme Court of Canada in **R. v. S.(J.H.)**, 2008 S.C.C. 30. I also refer to **R. v. F.(S.)**, 2007 P.E.S.C.A.D. 17 and in particular, para. 31 where the Court said as follows with respect to the credibility issue:

A conviction can only come about if the Crown evidence is so reliable, so consistent and so believable that it proves beyond a reasonable doubt the guilt of the accused. There must be no other reasonable conclusion from the evidence. If there is any reasonable doubt remaining after you hear the evidence of the Crown, either because of inconsistencies, unreliability, a lack of credibility or anything else, the Court must acquit - no matter what you thought of the accused's evidence.

[10] In **R. v. Lake**, 2005 N.S.C.A. 162, the Nova Scotia Court of Appeal noted with respect to **R v. W.(D.)** at para.22:

.. The point of W.(D).’s first question is not to isolate the accused’s testimony for assessment, but to ensure that the trier of fact actually assesses the accused’s

credibility, instead of marginalizing it as a lockstep effect of believing Crown witnesses.

[11] In **R. v. Ross**, 2006 N.S.P.C. 20, Judge MacDonald outlined at para.6 considerations which are helpful when assessing credibility of witnesses to determine where the truth is to be found. Paraphrasing his comments, they include the attitude and demeanor of the witness, the existence of prior inconsistent statements or previous occasions where the witness was not truthful, external consistency of the evidence (whether it is consistent with independent evidence accepted by the Court), the internal consistency of the testimony, whether witnesses have a motive to lie or to mislead the Court, and the ability of a witness who observed events to record them in memory. Finally, Judge MacDonald indicated that it is most important that the trier of fact be concerned with the sense of the evidence, whether common sense when applied to the testimony of the witness suggests the evidence is impossible, improbable, or unlikely, and what other results may arise when common sense is applied to the evidence.

[12] The background facts have been canvassed in detail in the evidence. The Accused, Mr. M., and the complainant, A.D.F., knew each other very casually over a substantial period of time due to A.D.F.'s parents involvement in the \* in which Mr. M. also participated. During a period of less than a year before July of 2005, A.D.F. and Mr. M. came to know each other better, and that was in the course of the relationship at the \* where Mr. M. was a leader. Beginning in the Fall of 2004, or very close to that time, A.D.F. became a \*. That \* relationship continued through the Winter of 2004 and 2005 up until July of 2005, when the first incident is alleged to have taken place on July \*, 2005, A.D.F.'s 14<sup>th</sup> birthday.

[13] At that time Mr. M. was not fully employed. He had health issues which were described in the evidence, including partial disability with respect to his back and his legs. He was living in a common law relationship with N. B.. His son lived close by in a rural setting. He had two grandchildren who visited frequently.

[14] A.D.F. had been attending school in the Spring of 2005. She had been a member of the \* since the previous fall. At that time, she was having difficulties at home. The indication was that she was becoming isolated from and not getting along well with her parents, particularly with her mother. Contact increased between A.D.F. and Mr. M. and Mr. M.'s family, especially his partner, N. B. and

his two grandsons. A.D.F. came to visit their house more frequently and biked approximately 30 to 45 minutes to get there in the early Summer of 2005.

[15] As this relationship developed, it led to the situation between July of 2005 and January of 2006 described in the evidence. The Court must determine whether there was sexual touching or sexual assault perpetrated by Mr. M. during that period. I am going to deal with the allegations, the particular events, to some extent individually or at least in groups. As I indicated, I am not going to review all of the evidence with respect to each one but I have considered it all. I am not going to address each and every corroboration and inconsistency in the evidence. I hope that from the reasons I give, you will understand the considerations which I have made.

[16] The first incident is alleged to have occurred on July \*, 2005. It involves an allegation that Mr. M. kissed A.D.F. while sitting or lying near the river across the road from his home. It is undisputed that was A.D.F.'s 14<sup>th</sup> birthday, and that she was somewhat out of sorts that day when she visited the M. household because her parents had not recognized or not given what she felt was sufficient attention to the fact that it was her birthday. Her evidence was that she went across the road from the house to the river and Mr. M. subsequently joined her. The parties agree on that. Mr. M. does not dispute that he went and sat next to her on the river bank. A.D.F. alleges that he kissed her there. He denies that and says that the only physical contact he had with her there was a hug when she was appearing to be downtrodden. There were some inconsistencies in A.D.F.'s evidence as to whether the kiss took place on the neck or on the lips. There was an inconsistency between her early testimony at a previous inquiry and her testimony in Court. There was also a significant difference between the evidence of A.D.F., who maintained the area was isolated and not visible from the road or the house as a result of alder bushes, and Mr. M.'s evidence that it was clearly visible, with a wide path. He denied the kissing and, in the circumstances, I am satisfied that Mr. M.'s evidence raises a reasonable doubt as to whether there was a kissing or a sexual touching or an improper touching in the circumstances. He testified that it did not happen. His description of the area was that it was clearly visible from the road and from the house across the road, and that his grandchildren were present at the house. I have given consideration to that evidence. I also note that N. B. corroborated the Accused's testimony as to visibility from the house and the road. Mr. M.'s evidence leaves me with a reasonable doubt about his guilt with respect to that

event, and it is also noteworthy that A.D.F. carried on thereafter as if nothing had happened.

[17] The next \* camp which A.D.F. attended in the C. area later in the Summer of 2005. Mr. M. did not attend the camp, but he and Mr. J. M., a fellow leader, intended to go for the final ceremony and some socializing. As events developed, A.D.F. had a difficulty with another \* at the camp. There were telephone conversations between her and Mr. M. who, in turn, was in touch with A.D.F.'s parents. Arrangements were made, in the context of A.D.F.'s family going on a vacation to \*, that since Mr. M. was going to be in the C. area with Mr. M., they would bring A.D.F. back to the T. area.

[18] The allegations on this occasion involved A.D.F. describing improper sexual touching in a tent during the night after she was taken out of camp by Mr. M. and Mr. M., and before the return to T. the following day. The allegation did not include intercourse, but indicated that there was touching of a sexual nature in the tent overnight. Mr. M. denied that it occurred. He acknowledged and testified that he slept in the same tent overnight with A.D.F. His evidence was that was the arrangement that she wanted. Her evidence was not that it was particularly something that she wanted, but rather it was something that she did not object to. Mr. M., who testified with respect to the incident, had no recollection of how the sleeping arrangements came about. However, Mr. M.'s denial of any improper sexual contact is supported with circumstantial evidence from Mr. M. who was not present in the same tent but who was in an adjoining single tent anywhere from four to twenty-five feet away, depending on whose estimate of distance is accepted.

[19] The Accused testified that he went to bed first, that he cleaned up and that he went to his sleeping bag in the tent and was there before A.D.F. entered that tent, and before Mr. M. went to bed. That is not A.D.F.'s testimony. Her evidence is that she was in the sleeping bag in the tent and subsequently joined by Mr. M.. Mr. M. corroborates Mr. M.'s evidence in that regard and I found his evidence clear - that Mr. M. went to bed first, and that Mr. M. and A.D.F. continued to play cards for some ten to fifteen minutes after Mr. M. went to bed.

[20] Mr. M., I found, was candid in his evidence with respect to what happened during the camping trip. He acknowledged that he had some beer, probably three beer, when he and Mr. M. went to socialize. He did not purport to remember all

events. He did not recall any discussions about making sleeping arrangements. I am satisfied that Mr. M.'s evidence was not contrived and that he had a genuine recollection of events. The denial by Mr. M. of the events alleged to have occurred was supported by Mr. M. who indicated the order of going to bed. He also clearly testified that the tents were close together and that he read for some time after Mr. M. had gone to his tent, and that he heard no conversation, no zipping of sleeping bags as alleged by A.D.F., nor any other signs which would lead him to believe there was any improper sexual activity.

[21] With respect to that event, I am not satisfied beyond a reasonable doubt that an offence was committed. Mr. M.'s evidence of the circumstances and his denial of improper conduct raises a reasonable doubt, particularly in the context of Mr. M.'s corroboration of events at the crucial time, and also of other minor details surrounding the whole trip. The evidence is consistent with Mr. M.'s version. By way of example, his testimony that the trip had been arranged some time in advance and the overnight was planned - that was corroborated by Mr. M. and also by N. B.. She also confirmed the telephone conversation that Mr. M. said took place with A.D.F.'s father prior to his going to C. and bringing A.D.F. home, during which it was discussed that they would be camping out overnight.

[22] On key issues, Mr. M.'s evidence is corroborated, to the extent there was anyone else present at any time, by Mr. M..

[23] The next series of events that I am going to consider happened during September and the first part of October of 2005, prior to any allegation of sexual intercourse. The degree of contact between the Accused and the Complainant increased significantly at that time. There were a number of factors which led to this. There was the matter of getting to \* A.D.F. came to rely upon Mr. M. to drive her to \*. She wanted to attend \*, and there were difficulties having her family drive her due to her father's work schedule. There was some contradiction in the evidence as to whether she always took the bus to Mr. M.'s place after school in order to go with him to \* or whether, on some occasions, she was driven to Mr. M.'s place by her father and on another occasion she took the bus. A.D.F.'s recollection is different than that of Mr. M. and her father, both of whom recall that at first her father drove A.D.F. to Mr. M.'s place.

[24] The contact between the Complainant and the Accused also increased in the context of \*. It was becoming apparent through the Fall of 2005 that A.D.F. was

having difficulty with \*. Arrangements were made where she would be \* by Mr. M., primarily on Tuesdays before \*, and incidentally by N. \*. The evidence establishes that she voluntarily went to Mr. M.'s residence on Tuesdays prior to \*, and then went to \* with him. After the meeting she either went to the \* from where she went home with her father, or went back to Mr. M.'s prior to going home. The evidence does not suggest that this was a situation which Mr. M. precipitated against A.D.F.'s will in any way, but that she went voluntarily.

[25] A.D.F. made allegations that sexual touching not including intercourse occurred at the Accused's home during this time and prior to October 16<sup>th</sup>. Her evidence is not precise about dates and times, but it is clear if you accept her testimony that there was the sort of activity which would constitute an offence under s.153 or s.271 of the **Criminal Code**. That activity is denied by Mr. M.. I am satisfied, as with the previous allegations, that Mr. M.'s denial raises a reasonable doubt that sexual activity occurred during these encounters at his place prior to the 16<sup>th</sup> of October. The arrangements with respect to the transportation, the visits, and the \* were corroborated by N. B., who although not always present, was there sometimes and was able to testify about the arrangements at the premises. It was clear that A.D.F. continued to voluntarily attend, and certainly made no comment to anyone that she did not want to be there.

[26] It is also apparent from the evidence that by October 16<sup>th</sup>, A.D.F. was a very troubled young girl. She was having difficulties most places where she went. She was having trouble at home with her parents. She had a problem at camp which required intervention by the authorities and almost led to her coming home. She was having difficulties at school \*. If not by that time, shortly thereafter there were issues involving behaviour at school and suspensions.

[27] In his summation, the Crown Attorney indicated that at the time these incidents allegedly took place A.D.F. was a young girl with issues, who was vulnerable, who came from a troubled family, who was acting out and rebelling. I agree with that description of A.D.F. Perhaps her situation was not that serious by October 16<sup>th</sup>, but certainly two weeks later, by October 30<sup>th</sup>, it had come to that.

[28] With respect to October 16<sup>th</sup>, this was a Tuesday and after \*, A.D.F. returned to Mr. M.'s residence to work on \*. She testified that this was the evening that sexual intercourse first took place. She described a situation in N.'s bedroom upstairs where this allegedly occurred. She recounted it as happening on a night



when B., N.'s son who at that time was in his early teens, was in the house. It is unclear from the evidence whether N. was home at the crucial time, but she did come home during the evening.

[29] One thing that troubled me with respect to A.D.F.'s evidence was that in an earlier statement she suggested that sexual intercourse began prior to October 16<sup>th</sup>. This has caused me considerable concern with respect to the weight that I am able to put on her evidence, because it would seem to me this would be a very significant event which she would clearly remember. Her credibility suffers somewhat because of the uncertainty surrounding the date that she alleges this event occurred.

[30] At this time, as of October 16<sup>th</sup>, Mr. M. had allowed himself to be in a very awkward and unusual position, which the Crown Prosecutor described as "stupid." He was allowing A.D.F. to spend more time with him, they were exchanging e-mails, she was at his house studying in the afternoon and in the late evening. This was not a good situation. Her allegation is that sexual intercourse occurred on the night of October 16<sup>th</sup> in N.'s bedroom. Mr. M. denies this occurred. I have considered all the circumstances, including that during the evening while the work was being done on the English paper her father was telephoning and anxious to pick A.D.F. up, that B. was at home, and that there was an English paper produced on the computer in a room next to where the sexual activity is supposed to have occurred. The house was small, B. would have had to go by the bedroom where this allegedly happened to get to the bathroom, and there was a hole in the bedroom wall. N. was at home at least some of the time. In all the circumstances I find that Mr. M.'s evidence, his denial, raises a reasonable doubt as to whether intercourse or any other sexual activity occurred at this time.

[31] Now with respect to October 30, 2005, and afterwards – I am not going to go into detail on all the particular days after this – but what happened on October 30<sup>th</sup> was that effectively, A.D.F. ran away from home. She came to Mr. M.'s residence, initially for one night, subsequently for a couple of more nights, and eventually was there until January 1<sup>st</sup>, 2006. She was very troubled and rebellious at this time. Leaving home on October 30<sup>th</sup> was precipitated by an incident in the car with her mother. She went to Mr. M.'s place voluntarily. Going forward after the 30<sup>th</sup> of October, there are allegations there was improper touching and sexual activity including intercourse between Mr. M. and A.D.F. until approximately Christmas. Those incidents were not set out in detail according to date, but A.D.F.'s evidence

was clear, that it happened repeatedly. Mr. M. denied each and every incident. A.D.F.'s testimony came through her direct examination and also through the video statement which was admitted under the **Criminal Code**. She said that the activities occurred in N.'s bedroom, in the bathroom, in the kitchen and on the couch in the livingroom. As I indicated, Mr. M. denied each of these events and his testimony was that the circumstances made it implausible that this would have occurred.

[32] The evidence described the layout of the house, and I referred previously to the bedroom's location upstairs en route to the bathroom. Despite the frequent presence of N. and B. in the house throughout these periods, I note that A.D.F. made no reporting of any of these events to anyone during this time, with one exception. On that occasion she made an allegation to Mr. P. that there had been sexual activity with Mr. M., but the circumstances are not insignificant. That was a day when she had been suspended from school. She had requested, perhaps demanded, a drive home either by N. B. or Mr. M.. When that was refused, the suggestion is that she felt spurned, and then she threatened to Mr. M. that she would report that sexual assault had taken place. His reaction was "fill your boots" or words to that effect. That is the only indication during that time that she reported improper activity. The suggestion by the Defence is that she was not reporting a fact, but using a threat to Mr. M. in order to get her way.

[33] There were other incidents in late 2005. There was a police encounter when A.D.F. was on the roof of the house and was chased down by the R.C.M.P. She was subsequently handcuffed and taken to hospital. There were unpleasant encounters at her parents' home. There were issues involving her going to \* at home, and about the amount of telephone contact that she would have with her parents. Throughout all this time the evidence of Mr. M. was that he was trying to create an alternative so that A.D.F. would move out of his house. He was trying to get her help to go back to her own home, to go with his daughter, to go to a foster home, or to get medical attention. I find that Mr. M.'s evidence raises a reasonable doubt as to whether sexual intercourse or other sexual activity occurred during this period of time. I do not find that the Crown has proven beyond a reasonable doubt that between October 30, 2005 and January 1, 2006, an offence contrary to either s.153 or to s.271 of the **Criminal Code** occurred.

[34] I am going to refer generally to some of the evidence which touches on all of these events but particularly the final period of time after October 30, 2005;

indeed, after October 16<sup>th</sup> when A.D.F. alleges that sexual intercourse first occurred. There is the physical evidence that Mr. M. was not able to use the missionary position, which A.D.F. indicated he repeatedly occupied. Although there was an issue as to whether he reached a climax, A.D.F. maintained he used that position. Mr. M. denied the physical ability to use or maintain that position, and his denial was corroborated by N. B.'s evidence.

[35] Mr. M. described efforts to get A.D.F. to move out of his home, either to foster care or to his daughter J.'s place. That evidence was corroborated by both N. and J.. It is apparent from the evidence that during this time Mr. M. was regularly advising N. of developments with respect to A.D.F., including the instance where she appeared in her underwear and her threat to report sexual activity the day that she was suspended from school. N. B. corroborated the Accused's description of A.D.F.'s conduct and she confirmed her participation in efforts Mr. M. testified they made to move A.D.F. out of their home. That evidence from Mr. M., corroborated by other witnesses, including N. and J., in my view combines to raise a reasonable doubt as to whether the events described by A.D.F. actually occurred.

[36] It is significant that none of Mr. M.'s evidence about events during this period is contradicted in any material way, or is inconsistent with the evidence of any other witness, except for A.D.F.'s allegation of sexual assault. A.D.F.'s father's evidence confirms the visits that Mr. M. maintains her father was invited to make, and made, to Mr. M.'s premises. He confirms the telephone calls A.D.F. made to her parents with the Accused's encouragement. N. confirmed the situation A.D.F. created in the M. household, A.D.F.'s trips home for \* , and the attempts by Mr. M. to get foster care and medical help for A.D.F.

[37] In reaching my conclusion, I have looked at all the evidence. I have been particularly mindful of the final directive in Judge MacDonald's decision in **R. v. Ross**, *supra*, where he emphasizes the importance of applying common sense when analysing the testimony of the witnesses, to determine whether an account of an event is impossible, improbable , unlikely or gives some other result. I have tried to bring a common sense interpretation to the evidence in this case. I have looked at the comparative options which were available to A.D.F. and to Mr. M.. Although only a young girl, A.D.F. did have options, according to the evidence. She could have gone with J., the Accused's daughter. Her father testified, although A.D.F. didn't agree and that again casts her evidence in some doubt, that she might

have been able to go with her grandmother in B.. If she had allowed herself to go to foster care, that may have been available. There were people to whom she could have turned or reported the situation, including at least three doctors with whom she was in contact in the latter part of 2005, the school authorities, and the R.C.M.P. during the night that they took her to the hospital. She did not exercise any option to report any sexual activity, except when she was in a situation where she was unable to get something which she wanted. That happened twice, first on the occasion where she was suspended from school and Mr. M. and N. would not pick her up, and secondly over the New Year's holiday, when it was apparent that while N. was in N. , she was not able to assume N.'s position in the M. household. Although I recognize she was a very troubled young girl, there were options available to A.D.F. It may not have been easy for her to exercise options if events occurred as she claimed, but the fact that she did not take advantage of opportunities to report contributes to the reasonable doubt which I have developed on the basis of Mr. M.'s testimony.

[38] Mr. M. testified that his only alternative to allowing A.D.F. to stay at his home was to turn her out onto the street. She would not return home, he was very reluctant to put her out, and he chose not to do that. It was a risky decision for him, and he acknowledged that. I have considered his evidence in that regard. I have also considered and was impressed by the evidence of N. B., who testified that it was a joint decision between Mr. M. and her to allow A.D.F. to stay at their residence in those circumstances.

[39] When common sense is applied to determine whether explanations are plausible, I am left with serious doubt that Mr. M. would be repeatedly committing sexual offences against A.D.F. at the same time he was encouraging her to have contact with people outside the home, both individuals and authorities, including the medical personnel with whom he assisted in arranging appointments for her. Applying a common sense approach to the evidence, I am left with a reasonable doubt, arising from his conduct in encouraging A.D.F. to leave his place and his efforts to obtain help for her, that at the same time he was committing the sexual assaults that are alleged. A.D.F. was very troubled, unhappy, and rebellious, and she did things which led to conflict when matters did not work the way she wanted. The evidence indicated that she had a crush on Mr. M. and indeed, may have been infatuated by him. She reported the sexual assault when she felt rejected. In those circumstances, common sense does not suggest to me that if these things were

happening as she alleged, she would not exercise some of the options that she had available.

[40] The Crown has a very high burden. It must prove all elements of the offences beyond reasonable doubt. I have considered all of the evidence in this case. In summary, I note that when an event was described by Mr. M. where it was possible for someone else to be present, his version of events is corroborated. That is the case with respect to the visibility issue concerning the \* event, and the sleeping arrangements with Mr. M. nearby and the order in which people went to bed in the tent at C.. There is generally corroboration for the Accused's version of the Tuesday afternoon activities before \*, the continued desire of A.D.F. to come to the M. home in the presence of B. and often N., the English paper circumstances on October 15<sup>th</sup>, and the events after October 31, 2005, including efforts by Mr. M. to get help for A.D.F.

[41] I am going to comment briefly about the theories of the parties. The Defence's position is that A.D.F. was a troubled girl who could not be turned out in good conscience by Mr. M. and by N. B., and that Mr. M. was falsely accused. Common sense tells me that is a reasonable interpretation of the evidence. The Crown's theory is that Mr. M. took advantage of a child who was infatuated with him; yet, A.D.F. whose evidence the Crown wishes to rely on to establish that, did not say that in her testimony in Court. Her evidence was not that she was infatuated and in love with Mr. M., but rather that she was scared and did not want the activity which took place.

[42] In the circumstances I find the Crown has not proved its case beyond a reasonable doubt and Mr. M. will be acquitted on both counts.

**J.**