SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. C.Y.*, 2019 NSSC 124

Date: 20190107
Docket: *Halifax*, No. CRH 473969
Registry: Halifax

Between:

Her Majesty the Queen

v.

C.F.Y.

Restriction on Publication: s. 486.4, 486.5, 539(1) of the *Criminal Code*

DECISION

Judge:	The Honourable Justice Christa M. Brothers
Heard:	October 9, 10, 18, 22, 2018, in Halifax, Nova Scotia
Oral Decision:	January 7, 2019, in Halifax, Nova Scotia
Written Release:	April 17, 2019, in Halifax, Nova Scotia
Corrected Decision:	The text of the original decision has been corrected according to the attached erratum dated **May 14, 2019**.
Counsel:	Emma Woodburn, Crown Counsel Terrance Sheppard and Allison Reid, Defence Counsel

Overview

[1] This matter is subject to a publication ban. Throughout this decision I will refer to “the complainant” and “the accused”.

[2] I allowed an amended Indictment on October 9, 2018. The amended Indictment charged the accused as follows:

1. that he between the 30th day of September 2011 and the 1st day of April, 2013, at, or near Hatchet Lake, in the County of Halifax, in the Province of Nova Scotia, did unlawfully commit a sexual assault on [the complainant], contrary to Section 271 of the *Criminal Code*.
2. AND FURTHER that he at the same time and place aforesaid, for a sexual purpose touch [the complainant], a person under the age of sixteen years directly with a part of his body, to wit: "his hands", contrary to Section 151 of the *Criminal Code*.
3. AND FURTHER that he between the 28th day of February 2013 and the 22nd day of August, 2014 at or near Dartmouth, did unlawfully commit a sexual assault on [the complainant], contrary to Section 271 of the *Criminal Code.*
4. AND FURTHER that he at the same time and place aforesaid, for a sexual purpose touch [the complainant], a person under the age of sixteen years directly with a part of his body, to wit., "his hands", contrary to Section 151 of the *Criminal Code.*

[3] The accused pleaded not guilty to all the charges. The matter proceeded by trial before me over four days, October 9, 10, 18 and 22.

[4] For the accused to be found guilty of the offences pursuant to s. 151 of the *Criminal Code*, offences known as sexual interference, the Crown must prove each of the essential elements beyond a reasonable doubt:

- The complainant was under the age of 16 at the time;
- The accused touched the complainant – accidental touching is not enough; and,
- The touching was for a sexual purpose.

[5] For the accused to be found guilty of the offence pursuant to s. 271 of the *Criminal Code* the Crown must prove all the essential elements:

- The accused intentionally applied force to the complainant;
- The issue of lack of consent need not be proven by the Crown given the age of the complainant and the application of s. 150.1(1) of the *Criminal Code*; and,
- The force applied took place in circumstances of a sexual nature.

[6] Parents, step parents, grandparents, family members in general and those *in loco parentis* regularly have healthy and supportive physical contact with children, ranging from hugs to high fives, cuddles, snuggles, and a variety of other types of touches. Showing physical affection is a normal aspect of the parent-child relationship. In this case, the complainant alleges that while the accused, at times, engaged in normal affectionate touches, at other times, he touched her in ways that were inappropriate and made her feel uncomfortable. The evidence relating to these allegations, as is seen in many such cases, comes primarily from two people, the complainant and the accused.

The Legal Standard
Presumption of Innocence

[7] The Crown has the burden throughout to prove beyond a reasonable doubt that the accused is guilty of the offences charged. There is absolutely no burden on the accused to prove his innocence.

[8] The accused begins the proceedings presumed to be innocent of all the charges. That presumption remains throughout the case unless the Crown proves his guilt beyond a reasonable doubt.

[9] Reasonable doubt is based on reason and common sense arising from the evidence or absence of evidence. Reasonable doubt is closer to absolute certainty than to a probability. Thinking the accused is probably guilty or likely guilty is not enough.

[10] The Crown must prove each element of the offence beyond a reasonable doubt. This includes that the touching was for sexual purposes.

[11] The majority of the evidence pertaining to these offences is the conflicting evidence of the complainant and the accused. I am guided by the decision of the Supreme Court of Canada in *R. v. W. (D.),* [1991] 1 S.C.R. 742. Here the instruction in considering evidence in such cases is:

(a) If the evidence of the accused is believed, he must be acquitted;

(b) If the evidence of the accused is not believed, but the evidence still raises or leaves a reasonable doubt, he must be acquitted; and,

(c) Even if the evidence of the accused does not raise a reasonable doubt, he must be acquitted if a reasonable doubt is raised by other evidence that is accepted. In order to convict, the evidence that the court does accept must prove his guilt beyond a reasonable doubt.

[12] To a large extent the Crown's case rests on the testimony of the complainant. The result of this case, as argued by counsel, hinges on credibility and reliability. It is not a matter of who I believe, it is a matter of whether, based on all the evidence or absence of evidence, the Crown has proved its case beyond a reasonable doubt.

[13] In considering the evidence, if I find the complainant credible it does not in any way shift any onus to the accused (*R.v. C.L.Y.*, 2008 SCC 2). The evidence needs to be considered and the credibility of the complainant must always be tested against the credibility of the accused (*R. v. E.M.W.*, 2009 NSPC 33, affirmed at 2011 SCC 31). As Campbell, J. stated in *R. v. EMW*, at para 47:

> It is not only appropriate, but necessary for judges to consider all the sources of reasonable doubt. The sources may include the doubt left by the complainant's evidence, the doubt created by the evidence of the accused, the doubt found in any other evidence or the doubt arising from the combination of those sources.

Assessing the Evidence of Children

[14] As I embark on the assessment and consideration of evidence, I am cognizant of certain principles which must be kept in mind when assessing the evidence of children. I refer to the decision of Judge Derrick (as she then was) in *R. v. A.W.H.*, 2017 NSPC 19:

> [74] I am dealing with the evidence of a young child. Certain principles must be kept in mind when considering such evidence. The standard of proof – proof beyond a reasonable doubt – does not get lowered in the case of child complainants. The credibility of child witnesses must be carefully assessed. That careful assessment must take into account the fact that, "Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection." (*R.v. W.(R.), [1992] S.C.J. No. 56, para. 24*) A "flaw", such as "a contradiction" in a child's testimony "should not be given the same effect as a similar flaw in the testimony of an adult." (*R.v. B.(G.), [1990] 2 S.C.R. 30, para. 48*) As the

> Supreme Court of Canada has said: "While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it." (*R.v. B.(G.), para. 48*)

> [75] The assessment of a child's evidence should not fall prey to rigidity and should draw on common sense. "Every person giving testimony in court, of whatever age, is an individual, whose credibility and evidence must be assessed by reference to criteria appropriate to her mental development, understanding and ability to communicate." And "…the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of events to which she is testifying." (*R.v. W.(R.), para. 26*)

[15] Assessing children's evidence has been dealt with in many decisions which provide guidance to this court. In *R. v. R.W.*, [1992] 2. S.C.R. 122, 1992 CarswellOnt 90, the Court spoke about the change of attitude towards assessing the evidence of children. In particular, the court stated:

> 24 Before turning to the particular errors alleged, I pause to consider the general question of how courts should approach the evidence of young children. The law affecting the evidence of children has undergone two major changes in recent years. The first is the removal of the notion, found at common law and codified in legislation, that the evidence of children was inherently unreliable and therefore to be treated with special caution. Thus, for example, the requirement that a child's evidence be corroborated has been removed: s. 586 of the *Criminal Code*, R.S.C. 1970, c. C-34, which prohibited the conviction of a person on the uncorroborated evidence of a child testifying unsworn, was repealed… Similar provisions of the *Canada Evidence Act*, R.S.C. 1970, c. E-10 and *Young Offenders Act*, S.C. 1980-81-82-83, c. 110, have also been eliminated. The repeal of provisions creating a legal requirement that children's evidence be corroborated does not prevent the judge or jury from treating a child's evidence with caution where such caution is merited in the circumstances of the case. But it does revoke the assumption formerly applied to all evidence of children, often unjustly, that children's evidence is always less reliable than the evidence of adults. So if a court proceeds to discount a child's evidence automatically, without regard to the circumstances of the particular case, it will have fallen into an error.

…

> 27 It is neither desirable nor possible to state hard and fast rules as to when a witness's evidence should be assessed by reference to "adult" or "child" standards – to do so would be to create anew stereotypes potentially as rigid and unjust as

> those which the recent developments in the law's approach to children's evidence have been designed to dispel. Every person giving testimony in court, of whatever age, is an individual, whose credibility and evidence must be assessed by reference to criteria appropriate to her mental development, understanding and ability to communicate. But I would add this. In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

Delayed Reporting

[16] In *R. v. D.(D).*, 2000 SCC 43, the Court spoke about delayed reporting not being diagnostic of fabrication:

> 59 Distilling the probative elements of Dr. Marshall's testimony from its superfluous and prejudicial elements, one bald statement of principle emerges. In diagnosing cases of child sexual abuse, the timing of the disclosure, standing alone, signifies nothing. Not all victims of child sexual abuse will disclose the abuse immediately. It depends upon the circumstances of the particular victim. I find surprising the suggestion that a Canadian jury or judge alone would be incapable of understanding this simple fact. I cannot identify any technical quality to this evidence that necessitates expert opinion.
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> 63 Application of the mistake reflected in the early common law now constitutes reversible error. See *R.v. W.(R.)*, [1992] 2 S.C.R. 122 (S.C.C.), *per* McLachlin J. (as she then was) at p. 136:
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> > Finally, the Court of Appeal relied on the fact that neither of the older children was "aware or concerned that anything untoward occurred which is really the best test of the quality of the acts." This reference reveals reliance on the stereotypical but suspect view that the victims of sexual aggression are likely to report the acts, a stereotype which found expression in the now discounted doctrine of recent complaint. In fact, the literature suggests the converse may be true; victims of abuse often in fact do not disclose it, and if they do, it may not be until a substantial length of time has passed.
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> The significance of the complainant's failure to make a timely complaint must not be the subject of any presumptive adverse inference based upon now rejected stereotypical assumptions of how persons (particularly children) react to acts of sexual abuse: *R. v. M.* (P.S.) (1922), 77 C.C.C. (3d) 402 (Ont. C.A.), at pp. 408-9; *R. v. M.* (T.E.) (1996), 187 A.R. 273 (Alta. C.A.).
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> 65 A trial judge should recognize and so instruct a jury that there is no inviolable rule how people who are victims of trauma like a sexual assault will

> behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one of circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

[17] In reviewing and considering the evidence, I bear these cases in mind.

Evidence

[18] I will review the evidence, but not all of it in detail. Although I may not mention all the evidence, I have carefully considered all of the evidence and testimony.

[19] The accused lived with the complainant's family from 2006 until 2014. In 2014, the accused stopped living with the family. Up until then, he was *in loco parentis* to the complainant and her two siblings, the oldest her sister, who I will refer to as Z.S. and her older brother, who I will refer to as J.S.

[20] There were several locations that the family lived with the accused. These included Lahey Lane, Highfield Park, Prospect, and Lakefront.

[21] It was not until 2017 that the complainant disclosed her allegations against the accused of inappropriate sexual touching. The court heard that the complainant first made a disclosure to a school counsellor, who in turn contacted her mother, who brought her to be interviewed by the Police. This took place on February 10, 2017.

[22] The complainant said she had a close relationship with the accused, but described incidents of inappropriate touching which included touching her breasts over her clothing and under her clothing but over a sports bra and touching of her buttocks and her inner thigh.

The Complainant

[23] The complainant's evidence was heard first and therefore I will address it first. While there may be comments respecting the credibility, reliability, or consistency of aspects of the evidence, no conclusions will be made concerning the credibility and reliability of the evidence until all evidence has been considered.

[24] The complainant was 14 years old when she testified. She was a Grade 9 student. Her sister, Z. S. was 18 years of age and her brother J. S. was 16.

[25] The complainant described the accused as her mother's boyfriend. He lived with the family for a long time. He had been involved with the family since she was two years old. Both the complainant and the accused referred to him as her dad.

[26] The complainant said they lived in Prospect when she was in grades 1, 2, and 3. She recalled living with her grandparents in Cole Harbour for a period. She recalled living on Lakefront Road during grades 4 or 5, 6, and 7. After this, the family moved to Gaston Road. The complainant testified that the accused lived with the family at Lakefront but moved out during her Grade 4 year. She testified that something happened with him and her sister that caused him to leave.

Relationship

[27] The complainant testified that her relationship with the accused was both good at times and bad. They would spend time and do things together: cooking breakfast, going to her brother's hockey games, and playing outside.

Sexual Touching

[28] The complainant testified that while living in Prospect, the accused started to touch her in ways that made her feel uncomfortable. She testified this also happened a little while they were living in Lakefront. The complainant testified that the accused would touch or grab her buttocks, would rub her inner thigh up and down and would touch her upper chest over her clothing and, on one occasion, over a sports bra.

Dressing the Complainant

[29] While living in Prospect, the accused would take J.S. to hockey practice in the early mornings. The complainant would go with them. She testified that the accused would dress her before these hockey practices. He would not let her dress herself. She testified that this upset her because she wanted to dress herself. The complainant did not testify that the accused touched her inappropriately while dressing her, or made her feel uncomfortable, but she wanted to dress herself and he insisted on doing it. This evidence was not offered as evidence of an offence as charged *per se* but to provide credible evidence for an inference that there were no incidental or mistaken touches in areas such as the breast, buttocks, or thigh, but

that these were purposeful touches, given the accused's behaviour while dressing her. The Crown make similar submissions regarding evidence (to be discussed below) that the accused watched the complainant in the shower.

Pool in Prospect

[30] The complainant testified about the family using a pool in Prospect. She testified that the accused would follow her around in the pool. She said it made her feel like she had a shadow and made her feel uncomfortable. She described the pool as a baby pool; low to the ground. She felt the accused would not leave her alone. She testified she would move away but every time he would be there and it "weirded her out".

[31] The complainant accepted on cross examination that while she felt the accused followed her around the pool and touched her arm and buttocks, she could not say whether or not the touch was accidental. She also denied he ever touched her on the breast in the pool.

[32] This bolsters the reliability and credibility of her evidence as she is not trying to exploit opportunities to paint the accused in a negative light.

Shower

[33] The complainant testified that while living in Prospect, the accused would come into the bathroom and watch her while she was showering. The complainant said this made her feel uncomfortable.

[34] She testified there was a washer and dryer in the bathroom and the accused would be using those appliances, but "not really" use them. He was pretending to do so to stay in the bathroom. She said the shower curtain that was transparent, enabling anyone to see through it. The complainant testified that while the accused was in the bathroom, she would try to hide in the corner of the shower, so he could not see her.

[35] The complainant testified that when she would say she was getting out of the shower, the accused would say he needed one more minute. Sometimes he would be doing laundry and sometimes not. She said this would happen often.

[36] On cross-examination, the complainant accepted that she was between seven and nine years old when living in Prospect. She said that when she was little the accused would help bath her, and possibly wash her hair, in Prospect.

[37] The evidence from the complainant concerning the accused watching her while she was in the shower is not on its own evidence of the offences as charged, but it does go to the assessment of whether any of the touching as alleged by the complainant could be viewed as evidence of the offences as charged. If I accept that it has been proven beyond a reasonable doubt that the accused was looking at the complainant in the shower and taking opportunities to be in the bathroom to see her naked, there is an inference to support that the touching was neither accidental nor incidental, but done with intent.

Horseplay

[38] The complainant testified about the "horseplay" she and the accused would engage in. The accused would flip her around his waist and turn her upside down. She testified that at times this was fun but at other times he would use this as an opportunity to grab and touch her buttocks. She testified that he would flip her around and his hands would at times be on her buttocks, as well as on her stomach.

[39] The complainant testified that the contact with her buttocks made her feel uncomfortable, and on those occasions she would cry for him to put her down. She said she did not like the way this felt and did not like where his hands were on her body. She said other people would be around. Sometimes, when she asked to be put down, those people would tell the accused to put her down. She said this horseplay would occur "a good amount of time".

[40] The complainant had specific recollections of this occurring when the family lived in Prospect. She testified that she could not recall if this occurred in other places, as she was too young to recall.

[41] While no one testified to corroborate this, it does not detract from the consistency of her core allegations. The complainant's sister and brother did not testify to this, but I do not have to accept all of her evidence to accept the core of her evidence.

[42] The complainant readily agreed that the photo marked as Exhibit 5 depicted her and the accused engaged in horseplay that was appropriate and fun.

Cuddling on the Couch

[43] The complainant testified that at times she would be on the couch watching television and the accused would rub her thigh while they were on the couch. She

testified that this would not normally happen elsewhere. She said this occurred a few times at Lakefront, but more often in Prospect.

[44] The complainant testified that the accused would rub from her knee to her hip on the inside of her thigh and not the outside. She said her sister and brother would be watching television as well. She said the contact would look like cuddling, but the accused would be rubbing her thigh throughout the movie. She testified that she would move but not react.

[45] When the family moved to Lakefront, the complainant was in Grade 4. She testified that at that time she was learning about sexual assault at school and had a friend going through it. Before that, she thought that was how people showed love.

[46] In Prospect, when the accused would sit on the couch with the complainant, he would touch her thigh on top of her clothes and she said it looked like cuddling. She testified he would always initiate the contact and he would push her into him. His arm would pull her in. This is consistent with the accused's own evidence aside from the touching of the inner thigh.

[47] The complainant testified that the accused would cuddle her on the couch and touch the inside of her thigh in Lakefront as well. She testified that this happened before he left the family home in August 2014. She agreed that this was after the accused and her mother resumed the relationship. The complainant was approximately nine years old at the time.

[48] In a videotaped statement, the complainant demonstrated to those interviewing her how the accused rubbed the outside of her thigh. She demonstrated this on three occasions. She depicted rubbing on the outside of the thigh. She gave the following explanation for the difference between that statement and her testimony at trial as follows: she said she did not know how to explain the area of the thigh he would rub so she just said her thigh, and rubbed her thigh. She explained that at the time of her testimony, in October 2018, she was older and knew better how to explain things.

[49] While this is an inconsistency, it is explained by the complainant. I will review this later in my decision.

Touching of the Complainant's Breast

[50] The complainant testified that the accused grabbed her breasts over her clothing. She said this would happen a lot, but could not say a specific time it

occurred. She testified that no one would be around when he would do this. She said this would occur in Prospect.

[51] The complainant recalled an incident when she was wearing a sports bra and the accused touched her over the bra.

[52] She testified that sometimes his hands would stay on her breast for a long time and sometimes not. She testified that he would rub her breasts like he was rubbing a soft blanket. This made her feel uncomfortable. She would move away. This is a descriptive explanation.

[53] The complainant testified that there were times when the accused scratched her back, and that he would rub her back with no ulterior motive, but at other times he would touch her breast area.

Touching of the Complainant's Buttocks

[54] The complainant testified that while the family was living in Prospect, the accused would sometimes squeeze and grab her buttocks. She said that if she was standing by the accused, or he was hugging her, he would pick her up. She said that sometimes this would be fun and sometimes not. Sometimes it would be done in a joking way.

[55] The complainant testified that at times when she would stand next to the accused, he would grab her buttocks. When he did this, she would move away from him. His hand would grab her buttocks and stay there. She said this happened in Prospect a lot. This made her feel uncomfortable. She testified that sometimes people would be around when this happened.

[56] Despite giving early statements and evidence at the preliminary inquiry, the first time the complainant mentioned the accused touched her buttocks while standing was at trial. She said he did not pick her up when he hugged her. The point was made that he was 6'4, and she was at 14 years old, 5'3 - 5'4 and this occurred when she was eight. The argument was that it would be difficult for him to touch her buttocks due to the height difference.

[57] The complainant said this would happen when her sister or brother were around, but not when her mother was around. Neither her brother nor her sister gave evidence of this. They were children themselves and there was no evidence the complainant complained, asked for help, or expressed discomfort to them when this happened.

[58] The complainant testified that at first, she did not react but as she got older, she would move. She felt uncomfortable and scared as she did not like the way the accused was touching her.

[59] The complainant was asked if this touching, while standing, happened anywhere other than Prospect. She responded, "not really".

Accused's testimony

[60] The accused testified in his own defence. The accused's testimony can be divided into two broad categories. The first is his denial. This denial has to be contrasted with the evidence of the complainant to be given context. In addition, his evidence was intended to undermine the credibility of the complainant's evidence by raising issues of potential collusion.

[61] He works at the Department of National Defence as a civilian electronics technician. He has held this position for 9 ½ years. He worked Monday – Friday. He would leave home around 6:30 or 6:45 a.m. and return at 5:00 or 5:15 p.m.

[62] The accused began dating the complainant's mother in February 2006 and moved in with her and her children in June 2006 at Lahey Lane in Dartmouth. In March 2008, the family moved to Highfield Park. In October 2011, the accused and the complainant's family moved to Prospect Road.

[63] In March 2013, the complainant's mother moved out with her children and relocated to Cole Harbour. The whole time the couple was separated they were in contact and they resumed their relationship in the summer of 2013. By December 2013, the accused lived full time with the complainant's family at Lakefront in Dartmouth.

[64] The relationship ended in August 2014 when Z.S. made an allegation against the accused. He provided information to the complainant's mother and was arrested, and pleaded guilty to two charges relating to Z.S. and her friend K.N. I make reference to this only for narrative of how the relationship ended. I denied earlier (with written reasons to follow) the Crown's application for the admission of similar fact evidence. I have in no way considered this evidence in reaching my decision.

[65] The accused described his relationship with the complainant, which commenced when she was approximately one-and-a-half years old. He described a close and good relationship. He testified that they had lots of fun. The accused

spent time with the complainant engaging in horseplay, such as a busker routine (as he described it) in which he would place her on his shoulder and would lift her up and flip her around and grab her by her side and spin her around and pass her around his waist repeatedly. He described this horseplay as moving the complainant's body around his like a hula-hoop. He described this as a fun routine. With regards to the busker performance, as he described it, he never recalled her crying and asking him to stop. He said he would stop because he was tired or if he was worried about dropping her.

[66] When the complainant was two or three years old, the accused was a leader in her Beavers group. He said he enjoyed going to lakes and walking in the woods with the complainant, as well as making breakfast and other activities.

Dressing the Complainant

[67] The accused testified that once or twice a week, J.S. had early morning hockey practice. If the complainant was awake, he would take her to the practice. The accused said he did not dress her but would give her clothes and then assist J.S. The complainant was to dress herself, but if the accused returned and she was not ready, he would dress her quickly to ensure she was ready to leave.

Shower

[68] The accused denied ever watching the complainant in the shower. He agreed that the washer and dryer were in the same room, but did not recall ever doing laundry while the complainant was in the shower. He also said the home in Prospect had a well and he did not think the washer, dryer and shower would all be running at the same time, because there was not enough water pressure. This was a confusing answer, but one given to explain why he would not have been in the bathroom doing laundry at the same time the complainant was showering. He later agreed that the shower could have run at the same time as the dryer.

[69] The accused testified he might have done laundry while the complainant was in shower if he was in a rush and had to go somewhere and the laundry needed to be done. However, he did not recall any specific incident.

[70] On cross-examination, the accused reiterated that running the appliances in the laundry room at the same time as the shower would result in reduced water pressure and colder water temperature. He agreed that he did not think there was any issue having the dryer and shower on at the same time. He also agreed that he

would fold clothes from the dryer, and he would, on occasion, get clothing out of the dryer, while people were in the shower. This was despite earlier evidence that he did not have time often to do laundry because of his work schedule.

[71] The accused's inconsistency and attempts to negate the possibility that he would be in the same room as the complainant showering, call into question his evidence on this point.

[72] The accused was asked about the allegations that he would stare at the complainant in the shower. He testified that while they were in Prospect, the complainant took a lot of baths, and he would assist her from time to time with her hair. He would ensure that the shampoo did not get in her eyes and cover her face when he rinsed her hair.

[73] When the complainant started to shower, the accused said, his involvement was purely instructional. He would not assist her. He would instruct her to rinse her hair. He would go into the bathroom while she was showering. He would leave and come back to the bathroom to check on her. At times, he would stay in the bathroom and wait to ensure she had rinsed her hair.

[74] The accused testified that the shower curtain was opaque, and one could make out shapes behind the shower. The accused was asked if he could see breasts through the shower curtain, and said he was not sure, because he did not test that. He testified that he could not have stared at the complainant while she was in the shower as the shower curtain was neither transparent nor see through. I do not accept his evidence on this point. At the end of the cross-examination, the Defence sought to re-examine the accused about the shower curtain. In re-examination a shower curtain was entered as an exhibit. This was not the actual shower curtain, but one the accused said was similar. The Crown sought to call reply evidence to deal with this exhibit and evidence of the accused. The defence agreed this should be allowed. I will discuss this later in my reasons.

The Pool in Prospect

[75] The accused was asked about the allegation that he followed the complainant around in the neighbor's small pool in Prospect, which was approximately 15 to 18 feet in diameter and 2.5 to three feet deep. He said if he was in the pool at all, it was only on two or three occasions. The accused testified that he may have lifted the complainant up on his shoulder or practiced the busker routine, but nothing else. He denied that she ever expressed concern about their interaction in the pool.

Busker Routine/Horseplay

[76] The accused referred to a photograph marked as Exhibit 5. He testified that it depicted him and the complainant at a beach engaging in their horseplay routine. He said they liked to show off for the crowd. The complainant was never asked whether this was a busker routine on cross-examination, and was never asked if they practiced the routine.

[77] On cross-examination, the accused testified concerning the acrobatic or busker routine. He said he would grab the complainant under her armpits and under her knees and thighs. He said his hand would be on her thigh sometimes because he needed to ensure that he did not drop her. He also said he might have incidentally passed his hand over her buttocks. He said he would loop her around his waist very quickly and in two minutes he could loop her around 10 to 15 times, 30 times in three minutes and maybe up to 45 times in that period of three minutes. He said he would pick her up under her armpits and plop her down on his shoulders. Part of the horseplay was to lift her up by the waist and hold her over his shoulders by her calves.

[78] The accused was adamant that when they did the busker routine he did not touch or grab the complainant on her inner thigh or buttocks.

[79] The accused said he never recalled her asking or crying to be put down during horseplay. He said he believed he would remember this if it happened.

Cuddling on the Couch

[80] The accused said they would sit on the couch and the complainant would cuddle into him and watch television. He also said the other children would do the same. The accused testified that he would touch the complainant's thigh, but on the outside of her thigh. He said he would place his arm around the complainant and his hand would rest on the outside of her thigh and he may have rubbed her outer thigh. The accused testified that the complainant never expressed discomfort with this.

[81] This is consistent with much of the complainant's evidence. She described cuddling, the accused putting his arm around her, and his rubbing her thigh. They differ on whether he intentionally touched and rubbed her inner thigh and the purpose of the contact.

[82] The accused denied ever touching the inside of the complainant's thigh. He testified that he could not recall all the ways he cuddled the complainant and touched her while cuddling. It was put to him that he could not deny touching her inner thigh. He disagreed, saying it was not reasonable because he would put his arm around her and it would rest on her outer thigh. If he did touch her inner thigh, it was incidental because of how big his hand was and how small the complainant was. He also said his thumb may have been on the inside of her thigh while the rest of his hand was on the outside.

[83] The accused testified that in Prospect, Z.S. would be the child to stay up the latest, and would be up a half hour to 2 hours later than the younger two. He would try to watch about a half hour of tv with them, but not a whole movie. He testified that if they had the time, he would cuddle the children on the couch, mostly the complainant and J.S. He was adamant that he would rarely watch an entire movie with the children because he did not have enough time. This did not ring true.

[84] The accused gave evidence on direct that the cuddling on the couch happened quite regularly, but in cross he said he would not sit for a long period and watch a full movie. He would sit for 15 minutes, or as long as he could. This was an inconsistency in his own evidence and an attempt to reduce opportunity for touches.

[85] The accused said he would spend time sitting on the couch and would cuddle family members, putting his arm around them and pulling them into him. He said he did this infrequently with the complainant's mother because she had a hard time sitting on the couch, but he would do it with the children.

Touching of the Complainant's Breasts

[86] The accused denied ever touching the complainant's breasts either under or over her shirt. He testified that this never happened. He testified that he and the complainant would exchange back scratches. He would rub her back for 10 minutes and she would rub his for two minutes. He said he would sometimes rub her back over her shirt, if she was wearing a tight shirt, and he would sometimes rub her back under her shirt, if she was wearing a loose shirt. He testified he never brushed up against or grabbed her breasts.

[87] On cross-examination, the accused denied ever hugging the complainant and placing his hands underneath her shirt.

[88] The accused testified that he never grabbed the complainant's breasts for a sexual purpose. He testified that he might have incidentally brushed up against her breast area while helping her to get dressed, or cleaning or buttoning her shirt. The complainant's evidence is that such contact was not incidental, but that the accused purposely touched her breasts.

[89] When asked if he ever tickled the complainant while they lived in Prospect, the accused said he had no recollection, but was sure it did happen.

[90] The accused also testified that during the nine years he knew the complainant he would have tickled her while she was on his lap but could not recall specific instances

Touching of the Complainant's Buttocks

[91] The accused denied ever grabbing the complainant's buttocks when he hugged her. He said he knew the complainant from when she was almost two years old until she was 10 years old. He testified that she was always much shorter than him. He testified he was 6'4". He gave this evidence to expand on why it was not possible for him to have touched her buttocks while hugging her. He then went on to testify that it was possible he had contact with her buttocks when he hugged her, but said he never grabbed her buttocks. There are some internal inconsistencies to this evidence which I have considered.

Opportunity

[92] On cross-examination, the accused testified that he rarely took care of the complainant alone. If her mother was not present, he was usually with the three children or with the complainant and J.S. He testified that the complainant's mother often had friends over, so there were often a lot of people around. It was unclear if this was in relation to Lahey Lane or otherwise. This was spontaneous testimony not elicited though a question. It was clearly intended to support an inference that the accused did not have the opportunity to do what he is accused of. The accused admitted to being along with the complainant from time to time, though he said this was not often. The accused testified that on school nights they would prepare food and clean up, and the complainant would have to be in bed by eight p.m. On the weekend, the children had activities. The indication was there was not a lot of time to interact with the kids and not alone. Of course, the accused would have been alone with the complainant over the course of nine years or longer living in *loco parentis* to the children. It would strain the bounds of

credulity that he would not be alone with her. I find this minimization of time spent alone with her to be incredible and strategic.

Z.S.

[93] The Crown and Defense submitted an agreed statement of facts. The first agreement took the form of excerpts from an interview of Z. S. dated February 23, 2017 (Exhibit 1). The facts agreed to in relation to Z. S. are:

- The complainant asked Z. S. questions about the process, that is the court process, but not the details of what Z. S. says happened to her. The complainant asked Z.S. what the courtroom looked like; what kinds of questions she would be asked; if it was scary; and if people were nice. The complainant asked Z. S. because of Z. S.'s experience three years ago. The complainant never spoke to Z. S. about what she alleges happened to her and never provided details.

- Z. S. believed the complainant and the accused "got along pretty well" and she never witnessed anything happen to the complainant.

J.S.

[94] An agreed statement of facts was submitted in relation to J.S.

- J. S. never had any concerns about the way the accused interacted with the complainant. He only ever saw the two of them interact when they were all together, sitting down, watching TV. There was no behavior that caused J. S. any concern and he said he did not really focus on other people; he would just watch TV.

[95] There is no corroboration by Z.S. or J.S. concerning the sexual touching. The law is clear that there need not be. I refer to s. 274 of the *Criminal Code* for the principle that no corroboration is required for conviction.

The Complainant's Mother

[96] The complainant's mother was in a relationship with the accused. She was 37 years old at trial. She testified to her children's ages: Z.S. was 18 years old and in grade 12; J.S. was16 years old and in grade 11, and the complainant was 14 years old and in grade 9.

[97] J.S. began a relationship with the accused in 2006. The couple split in 2014. She said the accused lived with her and her three children on Lahey Lane in Dartmouth from 2006 to 2008, in Highfield Park from 2008 to 2011, and in Prospect, close to Hatchet Lake, from October 2011 until March 2013. After living in Prospect, she and her children moved into her parents' home in Cole Harbour in March 2013 and then moved to Lakefront from June 2013 until 2016. The accused did not move in with the family in Lakefront but would come and stay with them.

[98] The complainant was four years old when they lived in Highfield Park. Grade primary and grade 1. She was in grades 2 and 3 when they lived in Prospect, and in grade 4 when they lived in Lakefront.

[99] The complainant's mother testified that the accused was in the role of father to her children. He helped the children with homework. They all called him Dad

[100] She described the relationship between the accused and the complainant and thought they seemed to get along well. The complainant was the first to call him Dad. She testified that while they lived in Prospect, the accused would play with the complainant outside on the trampoline, and would go swimming in the lake and pool in the backyard. Inside, he would read with the children, watch television, play games, and do arts and crafts.

[101] The complainant's mother testified that the complainant would sit on the accused's lap and they would cuddle. She would see them touching each other while cuddling. They would play tag and the accused would flip the accused upside down and tickle her.

[102] The complainant's mother described the "horseplay" between the accused and the complainant, saying he would spin her around, back and forth, upside down. This was in Prospect.

[103] The complainant's mother testified that when they were living in Prospect, when the complainant would shower or take a bath, she would need assistance with her hair, so that it was not tangled. Her mother said the accused would usually help with her hair, because she had a back injury, and could not help. The complainant stopped needing assistance when she was 11 or 10 years old.

[104] The complainant's mothers first back surgery was a year before they left Highfield Park. For the entire time they lived in Prospect, she had issues with her back and could not help the complainant with her hair. Her second surgery was August 2010.

[105] The complainant's mother said she ended her relationship with the accused when Z.S. made a disclosure. She testified she did not speak to the complainant about what Z.S. had disclosed, saying she was told not to tell the children what was happening with Z.S. She said she only advised the complainant something happened with Z.S. and that Z.S. had to meet with people. This was still the case after the complainant made her own disclosure.

[106] After Z.S. came forward with her disclosure, the accused had no further contact with any of the children.

[107] The complainant made a disclosure in February, when she was in Grade 7, to a school guidance counselor. The complainant was to go home and speak to her mother, which she did. The school called child services and her mother called the police.

[108] The mother testified that prior to the disclosure, the complainant suffered panic attacks, self-harm, and suicidal thoughts, as well as anorexia.

[109] On cross-examination, the complainant's mother agreed that she did not have any concerns about the horseplay between the accused and the complainant. When he would spin the complainant upside down and around his waist, she had no concerns. She said it just seemed like fun. She said the complainant would be laughing. She could not remember a time when the complainant would cry and say she wanted to stop.

[110] She said she never had concerns about the accused in the washer and dryer area while the complainant was bathing.

[111] The complainant's mother testified that she never witnessed inappropriate behavior between the accused and the complainant.

[112] The family moved to Lakefront in July 2013 when the complainant turned 10. The accused left the home June 2013 and the couple ended their relationship on August 2014, when the complainant was 11 years old.

Overall assessment of the Evidence and Inconsistencies

[113] In reviewing the evidence and considering any inconsistencies, I refer to several authorities.

[114] *R. v. Jacquot*, 2010 NSPC 13, Judge Tax said:

> 40 There are many tools for assessing the credibility and reliability of testimony. First, there is the ability to consider inconsistencies with previous statements or testimony at trial and with independent evidence which has been accepted by me. Second, I can assess the partiality of witnesses due to kinship, hostility or self-interest. Where an accused person testifies this factor must be disregarded insofar as his or her testimony is concerned, as it affects every accused in an obvious way, and may have the effect of reversing the onus of proof. Third, I can consider the capacity of the witness to relate their testimony, that is, their ability to observe, remember and communicate the details of their testimony. Fourth, I can consider the contradictory evidence as well as the overall sense of the evidence and when common sense is applied to the testimony, whether it suggests that the evidence is impossible or highly improbable.
>
> 41 Considering the evidence adduced at trial, I may believe and accept all, some or none of the evidence of a witness or accept parts of the witness's testimony and reject other parts.

[115] Further in *R. v. D.F.M.*, 2008 NSSC 312, Murphy, J. stated:

> 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 SCC 30 (S.C.C.). I also refer to *R. v. F.* (S.), 2007 PESCAD 17 (P.E.I. C.A.) 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.

[116] The following are helpful considerations when assessing the credibility of witnesses: the attitude and demeanor of witnesses, prior inconsistent statements, external consistency, internal consistency, motive to mislead, ability to record events in memory, and application of common sense to the evidence to consider whether it suggests the evidence is impossible, improbable, or unlikely. (See *R. v. Ross*, [2006] N.S.J. No. 233, 2006 NSPC 20, and *R.v. D.F.M.*, *supra*.

[117] In *R. v. M.G.*, (1994), 93 C.C.C. (3d) 347, 1994 CanLII 8733 Ont. C.A., the court commented on the means of assessing credibility as follows:

> [27] Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the

> witness-box and what the witness said on other occasions, whether on oath or not. Inconsistencies on minor matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.
>
> [28] The effect of inconsistencies upon the credibility of a crucial witness was recently described by Rowles J.A. speaking for the British Columbia Court of Appeal in *R. v. B. (R.W.)* (1993), 40 W.A.C. 1 at pp. 9-10, 19 W.C.B. (2d) 260:
>
> > Where, as here, the case for the Crown is wholly dependent upon the testimony of the complainant, it is essential that the credibility and reliability of the complainant's evidence be tested in the light of all of the other evidence presented.
> >
> > In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness's evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness's evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here.

Assessment of the Accused's evidence

[118] The defence argues that the evidence of the accused was internally consistent and credible. I disagree. I will review some of the inconsistencies found in the accused's evidence which leads me to reject his evidence.

[119] Asked what activities he liked to engage in with the complainant, the accused said there was a lot of horseplay, but on cross-examination he said, there was not a lot. This internal inconsistency was not explained, and demonstrates carelessness in his evidence. It is a change of testimony. Again, this leaves a possible inference that he was minimizing the opportunities for touching.

[120] The accused testified about the horseplay he said took place. On cross-examination, for the first time he mentioned the horseplay being outside. He did not mention this on direct. This is less material to his reliability then the previous point.

[121] The accused admitted initially that he often watched television with the complainant and cuddled with her on the couch. However, later in his testimony he said he did not watch a full show with the children but only watched for short periods of time. Again, the inconsistencies suggest an attempt to minimize the opportunity for contact with the complainant. The accused further noted that he did not have much time to sit and watch a movie or cuddle, but did not clearly explain why.

[122] The accused testified that he did not tickle the complainant while horse-playing but on re-examination he included tickling with horseplay inside.

[123] The defence argues that the opaqueness of the shower curtain is a red herring. The accused recalled it being opaque, not see through. The complainant, her mother, her aunt and a family friend recall the shower curtain being transparent.

[124] This is not a red herring. I accept the complainant's evidence on this point, that the shower curtain was transparent. The accused's evidence is not reliable on this point. The defence attempted to argue that it would be difficult for most people to recall what type of shower curtain they had five years prior. However, this was not actually the evidence of the accused. He testified that the shower curtain was not transparent. He did not say he could not recall or was unsure. I do not accept that it was of no consequence to him. If one was in a bathroom while another was showering, and the shower curtain was transparent, one would recall that. It would be noteworthy. Again, a theme emerges from the evidence of minimizing opportunities.

[125] The accused denied certain physical interactions with the complainant. It is disingenuous to state the touching never occurred in certain areas. It is a disingenuous attempt to limit his contact with the complainant over the years.

Complainant's evidence and Inconsistencies

[126] There are inconsistencies and issues raised by the defence concerning the complainant's evidence. I will review many of those now in considering whether the evidence leaves me with a reasonable doubt. To be clear I have considered any and all inconsistencies.

Explanation for delayed reporting

[127] There is an inconsistency between the statement given by the complainant on August 28, 2014 and her trial evidence. Initially, she did not disclose the allegations of sexual touching. This is a clear inconsistency. The complainant was asked about this and explained. She testified that while she was in grade 7, she told a school counsellor about the sexual touching. She explained she could not deal with it anymore. She testified that she had an eating disorder, was having a hard time going to the hospital, and had to tell someone. She testified that she could not deal with "it", meaning the thoughts of the sexual touching, in her head anymore. The complainant further testified that she was suicidal at the time and had to tell someone.

[128] The complainant said she did not disclose earlier because she did not want to do that to her mother and cause more stress so she decided to be there for her family instead of helping herself.

[129] At first, the complainant said, she thought the touching by the accused was love. She also felt like she had to be the one in the house that held things together. Her sister was hurt, her mother was hurt, and her brother was acting out badly. She felt she had to stay strong for them even though something happened to her.

[130] While I am careful not to put too much weight on demeanor, and I appreciate that different people react differently, the complainant had difficulty at this point, becoming emotional when speaking of not reporting earlier. When asked why she hadn't told anyone before, the complainant said she realized her sister told about some issue and she felt she needed to hold it together and had to be strong for her mother and her sister. She said she did not tell the police because she felt she couldn't do it to her mother and put more stress on her. She had to be strong for her mother.

[131] Again, I found this evidence to be convincing. I do not find her failure to disclose when she gave a statement to police on August 28, 2014, impacts her credibility or reliability. I accept her explanation

Knowledge of her sister's disclosures

[132] The defence suggests that the complainant may have been impacted or influenced, even unconsciously, to reexamine neutral or innocent touching in a sinister light. The complainant testified that she was aware that something happened to her sister, and something happened to her sister's friend K.N., while they were at a lake with the accused.

[133] The complainant's knowledge about her sister was that the accused touched her. The complainant testified that she knew more about what happened to K.N. at the Lake than anything else. She did not know the details about what happened to Z.S. because her sister did not share the details with her and her mother told the complainant she could not speak to her sister about what happened.

[134] In terms of the allegations concerning K.N., the complainant learned through conversation with K.N. of some details and, also learned of basic details from her grandmother in a conversation that occurred two weeks prior to trial.

[135] The complainant did not attend court in relation to Z.S. People told her the accused would not be coming back to their home, but no details were given. The complainant said she put the pieces together as she could. She testified that her limited knowledge of Z.S. and K.N. did not affect her testimony. The evidence of the complainant did not seem affected at all. She admitted that her grandmother told her some details, but her evidence in relation to the accused is not similar to what she said she knew about K.N.

[136] The complainant said she heard some things about Z.S. when she was trying to go to sleep the evening the accused left the home. She did not articulate what it was but said that her mother and sister would not confirm any information and would not speak with her.

[137] The complainant also confirmed that she thought the accused had looked at her sister in the shower, and she confirmed an earlier statement that he would hug her and touch her, and she thought he did this to her sister as well. She explained that she knew something occurred, and her sister was, in her words, sexually assaulted, but she did not know the details. She knew the accused did something and Z.S. went to court but did not know the specific details.

[138] I accept that the complainant was not influenced in her evidence by any prior knowledge or otherwise.

[139] I accept the complainant's mother's evidence that she did not speak to her daughter about any of Z.S.'s disclosures. I accept that she took a cautious approach. Her mother impressed me as a responsible parent who did not wish to interfere with the process but wanted to do what was appropriate. She testified that she never saw the accused touch the complainant inappropriately. She could have taken the opportunity to shed a negative light on the accused, but she did not do so. She was a fair and honest witness.

The Shower Curtain

[140] There is a difference between the evidence of the accused and that of the complainant with regards to the transparency of the shower curtain and the ability for him to see her while she showered. On this point I accept the complainant's evidence. I do so, taking into account the following testimony.

T.S.

[141] T.S. is the complainant's aunt. She testified to being at the family's residence in Prospect and said the shower curtain was see-through or transparent. This was memorable to her because she wondered what was the point of a clear shower curtain. She said it might have had squiggly lines or dots, but those did not obstruct the view. She said she saw more than one shower curtain during her visits but even when it changed it was still transparent. She said she asked her sister why she had a clear shower curtain. Her evidence was that they discussed the shower curtain.

[142] T.S. was shown Exhibit 7, the shower curtain put into evidence by the defence. She testified that it was different from the one in the home in Prospect, which was clear. She likened it to Saran Wrap.

[143] T.S. testified on cross-examination that she was at the Prospect home about six times and saw the curtain each visit. She said she never showered there, but she would use that washroom when she was visiting. She testified the shower curtain stood out to her on at least two occasion because it was transparent.

J.S.

[144] The complainant's mother testified about the shower curtain in the main bathroom of the home in Prospect. She testified that it may have had some color to it, but it was clear and see through. She likened it to a plastic cover put over a table cloth. She said it was like a window in terms of the ability to see through it. She would purchase these curtains from the dollar store. They could have color to them, or different patterns on the bottom, but were still see-through.

[145] J.S. was shown the shower curtain marked as Exhibit 7. She testified that the shower curtain in her home was see through and this one was not.

[146] J.S. testified that while they were living in Prospect the family had three or four shower curtains, because they would break. She did not recall a conversation

with her sister about the shower curtain. This did not detract from her evidence but only served to bolster her reliability.

A.C.

[147] A.C. is a friend of the S. family. She met the complainant's mother at the Dartmouth Family Centre 12 years ago and worked with her sister. She was to their home in Prospect 10 to12 times. She said she was in the bathroom on the main floor. She testified that the shower curtain was transparent and that she could see right through it. She recalled a clear shower curtain and, also a clear shower curtain that had some purple tint to it.

[148] A.C. was shown the shower curtain marked Exhibit 7, and said it did not look like the one at Prospect. She testified that the curtain marked Exhibit 7 was frosted or opaque, while the other shower curtain was transparent. She recalled the shower curtain at Prospect road because, in her words it would never fly in her home because people would come in and out of the washroom.

[149] On cross-examination, A.C. said she was at the home in 2010 and 2011 and had occasion to be in the bathroom to see the shower curtain. She said she was in the bathroom fewer times than she was in the home, but was not sure how many times. She did not recall if the see-through and the purple tinted curtain were the same or different, but she was clear that the shower curtain in that bathroom was clear or transparent.

[150] I do not accept the accused's evidence that the shower curtain was opaque. I accept the complainant's evidence as supported by the above-referenced evidence that the shower curtain was indeed transparent.

The Complainant's Evidence

[151] The complainant was questioned on four occasions: by the police on August 28, 2014 and February 10, 2017. At the preliminary inquiry on February 28, 2018, and then at trial.

[152] In the first three statements, the complainant did not disclose that the accused grabbed her on the buttocks while they were standing side by side. I accept this is an inconsistency which has not been explained in a way which alleviates the doubt raised by it. Consequently, I do not accept this portion of the complainant's testimony. I am unsure of the reason for the inconsistency and I have a reasonable doubt on this point. I am not troubled by the height differential

between the two, but I am troubled by the inconsistency between the trial testimony and early statements.

[153] Overall, I do not find the complainant was careless with the truth.

[154] There was an inconsistency between the video statement when she demonstrated the accused rubbing her outer thigh, and her trial testimony, when she said he touched her inner thigh. She explained that she did not have to explain it before and was older now and could explain it better. I accept her explanation that over time she has become better able to explain what happened to her.

[155] The evidence as a whole, supports the conclusion that the accused's interactions with the complainant were not a coincidence.

[156] The complainant's core allegations have never changed. She thoughtfully explained why she did not come forward and disclose when asked questions in August 2014. Her explanation mirrored the language used by the Supreme Court of Canada, indicating fear, guilt or lack of understanding or knowledge.

[157] The complainant was not looking at every interaction in a negative light. She could differentiate between contact that was comfortable, contact she was not sure of, and contact that made her feel uncomfortable. She withstood statements, a preliminary inquiry, and a trial with limited inconsistencies. She did not come to court with animosity, but was willing to admit the good parts of her relationship with the accused. She spoke of having good times and fun with him. She was not angry with him.

[158] Taken as a whole, I am convinced that these touches happened to the complainant. She was by and large consistent in her evidence. Her narrative did not change. She did not exploit opportunities to show the accused in a negative light. Quite the opposite. She spoke of positive aspects of their relationship. She admitted when she was unsure whether the touch was incidental or accidental and was clear that no touching occurred in the pool. Because of this, and her consistency on the core of her allegations, I find her evidence credible and reliable.

[159] It is the consistency of her core allegations, the nature of them and the other aspects of her evidence which she reiterated in cross-examination and direct, that displaces the presumption of the accused's innocence.

[160] None of the inconsistencies in the complainant's testimony were enough to impact my decision on the reliability of her evidence.

[161] I find no reasonable doubt in the complainant's evidence. I have confidence in the reliability of her evidence that even in light of the accused's denial, her evidence displaces any reasonable doubt. I rely on *R. v. Jaura*, [2006] O.J. No. 4157 (Ont. C.J), which speaks of the ability of a complainant's evidence to do this. This conclusion is reached after considering the accused's evidence, her evidence, and all the other evidence at trial.

[162] I have not found reasonable doubt in any of the evidence presented by any witnesses or by the parties.

Conclusion

[163] I find the Crown has proven, beyond a reasonable doubt, that while living in Prospect, the accused touched the complainant on her buttocks, her breasts and her inner thigh, contrary to s. 151 and s. 271 of the *Criminal Code*.

[164] I further find the Crown has proven beyond a reasonable doubt that the accused touched the complainant on her inner thigh contrary to ss. 151 and 271 at the Lakefront.

[165] Before entering convictions, I will hear counsel on the application of *R. v. Kineapple*, [1975] 1 S.C.R. 729. In the circumstances, stays are appropriate in relation to some of the charges.

[Stays were imposed in relation to the two s. 271 convictions.]

Brothers, J.

SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. C.Y.*, 2019 NSSC 124

Date: 20190107
Docket: *Halifax*, No. CRH 473969
Registry: Halifax

Between:

Her Majesty the Queen

v.

C.F.Y.

Restriction on Publication: s. 486.4, 486.5, 539(1) of the *Criminal Code*

ERRATUM DATED MAY 14, 2019

Judge:	The Honourable Justice Christa M. Brothers
Heard:	October 9, 10, 18, 22, 2018, in Halifax, Nova Scotia
Oral Decision:	January 7, 2019, in Halifax, Nova Scotia
Written Release:	April 17, 2019, in Halifax, Nova Scotia
Counsel:	Emma Woodburn, Crown Counsel Terrance Sheppard and Allison Reid, Defence Counsel

Erratum

1. In paragraph 14 in the quotation from paragraph 74 of *R. v. A.W.H.*, 2017 NSPC 19, the word "the" has been inserted before "Supreme Court of Canada" in the last sentence

2. In paragraph 14 in the quotation from paragraph 75 of *R. v. A.W.H.*, 2017 NSPC 19, the word "a" has been inserted before "child's evidence" in the first sentence

3. In paragraph 15 in the quotation from paragraph 24 of *R. v. R.W.*, [1992] 2 S.C.R. 122, the last sentence has been deleted and the following two sentences inserted:

> "But it does revoke the assumption formerly applied to all evidence of children, often unjustly, that children's evidence is always less reliable than the evidence of adults. So if a court proceeds to discount a child's evidence automatically, without regard to the circumstances of the particular case, it will have fallen into an error."

4. In paragraph 15 in the quotation from paragraph 27 of *R. v. R.W.*, [1992] 2 S.C.R. 122:

   - The word "addressed" in the first sentence has been changed to "assessed"
   - The word "Everyone" at the beginning of the second sentence has been changed to "Every"
   - The word "Bute" at the beginning of the second last sentence has been changed to "But".