SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Chambers*, 2021 NSSC 273

Date: 20210705
Docket: CRH No. 484455
Registry: Halifax

Between:

Her Majesty the Queen

v.

William Charles Chambers

Decision

Restriction on Publication:
Section 486.4 of the Criminal Code of Canada (Identity of the Complainant)

Judge:	The Honourable Justice Denise M. Boudreau
Heard:	August 31, September 1, 2020, February 25, 26, March 19, 22, 30, May 21, 2021, in Halifax, Nova Scotia
Oral Decision:	July 5, 2021
Written Release:	September 27, 2021
Counsel:	Katie Lovett, for the Crown Ian Hutchison, for the Defendant

By the Court (Orally):

[1] William Chambers is before the Court facing two charges:

1. That he between the 30th day of September, 1979, and the 4th day of January, 1983 at, or near Cole Harbour, in the County of Halifax, in the Province of Nova Scotia, did indecently assault [redacted], a female person, contrary to Section 149 of the *Criminal Code*.

2. AND FURTHER that he between the 3rd day of January, 1983 and the 2nd day of June, 1985, at the same place aforesaid, did unlawfully commit a sexual assault on [redacted], contrary to Section 246.1 of the *Criminal Code*.

[2] The trial was held before me and what follows is my decision. I would remind anyone listening to this decision that there is a publication ban on the identity of the complainant. I will start with a review of the most relevant evidence that I have heard in this trial. I have considered all of the evidence, but, in the following review, I am only making reference to those parts most relevant for my purposes.

Facts

[3] The Court first heard evidence from the complainant. From this point forward I will refer to her as the complainant. Her evidence was as follows.

[4] She was 53 years of age at the time she testified. Her date of birth is October 26, 1966. She testified that as a child she moved to a duplex home at 18 [redacted] Road in [redacted], Nova Scotia, with her family consisting of her mother, father, and infant brother JG. She says that she was then in grade four and was ten years old, going on 11. Her brother was about ten years younger, born in 1976.

[5] The home they moved to was a three level home with an unfinished basement, a main floor with living and kitchen areas, and a third floor with the bedroom areas. The street was a dead end street with 18 duplexes, mostly young families with children. All families were familiar with each other and were friendly neighbours.

[6] The complainant's direct neighbours were JA and GA and their children DA and AA. The A residence was 16 [redacted] Road and it shared a wall with the G residence.

[7] William Chambers, commonly known as "Bill" (hereinafter the defendant), lived at 12 [Redacted] Road, which would have been the next duplex over from the

G and A duplex. He lived with his wife CC and her daughter L. His house was also three levels and would have had a similar floor plan to the G home except it would have been reversed. The homes were not very large homes, she indicated.

[8] The complainant estimates that the defendant might have been in his late 20s or early 30s at that time. She stated that L was four years younger than she was, but they still knew each other well and spent time together. The complainant saw her often, as well as the other children on the street.

[9] The complainant testified about her ages by year and by school grade: she says she was 13 in grade seven, 1979 to 1980; 14 in grade eight, 1980 to 1981; 15 in grade nine, 1981 to 1982; 16 in grade ten, 1982 to 1983; 17 in grade 11, 1983 to 1984; and 18 in grade 12, 1984 to 1985. She graduated high school in 1985.

[10] The complainant testified that in elementary school she liked school, but starting in junior high she found things to be different. She found that she did not like certain subjects, or found them harder. She named science, math, and gym. At that time, the defendant started helping her with math as she was having trouble specifically with algebra. This was in grade seven, the year she turned 13 in October. The complainant believed her mother made those arrangements with the defendant. She believes the sessions with the defendant started in November or

December of her 13th year, and continued until he and his family moved away about four and a half years later, in January of her grade 11 year.

[11] At the beginning, the complainant described that the tutoring took place in his home, the defendant's home, at his dining room table. At first the complainant recalls receiving help about once or twice per week, perhaps more if she had a particular extra need such as an assignment. As I understood her evidence, there were never any scheduled or pre-arranged days for this help to take place. She or her mother would simply call the defendant for help when she needed it. To her knowledge he did not tutor any other children.

[12] She described the defendant's house as having a main floor with a kitchen/dining area, living room, bathroom, and a basement that was finished with a bar area, laundry area, television/rec room area. Upstairs there were three bedrooms and a bathroom.

[13] She recalled that the defendant did renovations to his home when she was in approximately grade ten or 11. She said the dining room table was moved to a spot under the window, the opening directly to the living room was blocked off, and the door to the basement/bathroom was made into a pocket or sliding door.

[14] The complainant said that the tutoring with the defendant was at the dining room table at first. Then when she was in grade nine or ten, the defendant had a desk in the spare bedroom upstairs and they would work there. This desk was first under a window in the room, and then later over by the closet. The defendant also had a couch put in that room.

[15] The complainant described each session lasting about a half hour to 45 minutes. She described the first session being in November of grade seven, after her first term marks. She said at first she sat at the dining room table and he sat across from her. This continued through grade seven into grade eight. She noted that by grade eight, the math was getting harder. She estimated then meeting maybe three times per week, or having longer sessions.

[16] By grade eight, the complainant testified that the defendant started sitting beside her at the table to help her, usually on her right.

[17] She described that one night she had been at the Chambers home for supper and she was helping put away the dishes. The complainant and Mr. Chambers were reaching for the cupboards. She said that the defendant took his right hand/forearm and touched the side of her body; he ran it up her body from her hip to the side of her breast. She said he did this twice, but the second time she blocked it so he went

up the side of her arm. She said others were in the home at this time, but he did this when they were out of the room.

[18] She testified in direct that she believed this incident occurred in approximately March of her grade eight year, when she would have been 14 years old. However, in cross-examination her evidence became much less clear about this incident. While she still believed that she had been 13 and almost 14 when this happened, she acknowledged saying at the preliminary inquiry that she had been 14 when that occurred. This might be explained by the fact that, when being cross-examined about it before me, she then indicated that this touching incident had, in fact, happened on several occasions. It was not clear to me when those other occasions would have been, or what exactly occurred.

[19] She testified that as the tutoring continued into grade eight, as they both sat on the same side of the table, at some point the defendant started touching her leg with his hand, rubbing up and down between the hip and the knee, squeezing, on top of her clothes. She said she pulled away a few times, but never said anything. She said he did not do it every time they met, maybe a dozen times.

[20] She testified that he then started moving his hand to the zipper of her pants, and he would rub her crotch area over her clothing, rubbing and squeezing that area with a fair bit of pressure. She estimated this happened 48 to 50 times.

[21] She said then he started undoing the zipper of her pants and reaching in with his hand, rubbing and squeezing her crotch/vaginal area over her underwear.

[22] She said he would do this for five minutes or so, and would stop if he heard anyone coming. If so, he would stop and she would zip up her pants. The complainant estimates this touching (inside her pants, but over her underwear) was happening by grade nine, when she would have been 15. The complainant said this might have happened 30 to 50 times, approximately once per week. The complainant further estimated that from the very first incidents of rubbing her leg to the incidents where he was touching inside her pants was about a three month span of time. She described feeling dirty and disgusted that he was doing this.

[23] She testified that he then moved on to placing his hand inside her underwear, still rubbing and squeezing, on her vaginal area. She said he would insert his fingers into her vagina, as far as he could reach. Her pants would remain on, and he would either go down her underwear or up one of the leg holes of her underwear.

He would do this for about ten to 15 minutes at a time. The complainant estimated that these incidents occurred around the end of grade nine and into grade ten.

[24] She said that nothing would be said by either of them. She would simply keep looking at her homework. She testified that these incidents happened between 50 and 100 times at the kitchen table. Usually there would be somebody home, but they would be elsewhere, such as in the basement watching television.

[25] She testified that she did not tell anyone at the time because she was scared, she feared something happening to her younger brother, and/or she feared her father would hurt the defendant if he found out and would get in trouble. I note that, later in her testimony, the complainant also referenced that she had a general fear of police from way back; she had seen someone “taken away”, as she described, once.

[26] She testified that around grade ten there was a desk installed in a bedroom upstairs, at which time the tutoring was moved there. Again, the defendant would sit beside her for the sessions. She testified that there was no other furniture in that room except about six months later they put in a couch near the door. In cross-examination, she described this further as a couch with no back.

[27] Once they were upstairs, she stated that there was still tutoring two to three times per week, for 30 to 45 minutes. She said that the defendant continued to touch her in that room as well. When they were seated at the desk, again he would open her pants, rub her vaginal area, and put his fingers in her vagina.

[28] She testified that after the couch was put in, he would sit on the couch at the end of their sessions with his legs blocking the doorway. When she would head to the door, he would pull her over to him. He would lay with his back on the couch and place her on top of him, her back on his chest, her legs on his legs. He would then pull her zipper down, again put his hand in under her underwear and put his fingers in her vagina.

[29] She said he would then unzip his pants, pull out his penis and ask her to hold it, and she would say no. He would use his free hand to take her hand and place it on his penis, applying pressure to it and rubbing it with an up and down motion. She indicated that she could feel the defendant's penis was erect, and she would feel slime come out of it.

[30] She said he also, on occasion, would rub her breasts under her clothing while laying underneath her on the couch. She said he also, on occasion, would rub her breasts under her clothing while she was laying over him on the couch.

[31] She testified that once, when both were standing at the kitchen table, the defendant pulled up her T-shirt and pulled down her bra and licked one of her nipples. He then heard a noise and stopped. The complainant was not sure when this was.

[32] The complainant believes the incidents upstairs would be at the end of grade ten, approximately June or July. She estimates the upstairs events happened about 30 times total, or about once per week. She testified that neither ever said anything during these events. The incidents would end when he would hear someone coming or he would just stop on his own. She would then get up and arrange her clothes, wash her hands and go home where she would have a bath or shower, and cry.

[33] The complainant testified that also once in the kitchen of the defendant's home, he pulled her close and unzipped both of their pants. He pulled her underwear down and took his penis out of his pants. He brought his penis close to her vagina, but did not touch her. She left and went home. She believes this was in her grade 11 year, after the renovations. She recalls having had supper there that day, but no tutoring. Both CC and L were downstairs. I should note that in cross-examination she said there had been math tutoring that day.

[34] She described another event occurring at the start of grade 11, where she needed to use a typewriter for school. The defendant's wife had one. She said she first used it at the upstairs desk, but it got dark so she carried it to the living room and was working on the floor, lying on her stomach. The defendant came in and laid down next to her. He reached under her, opened the zipper of her pants, and again put his fingers in her vagina. She said he did this for about 15 minutes until they heard CK and DK come upstairs from the basement. The defendant then got up and sat on the couch and the complainant went home. On cross-examination, she agreed that it was DK who had come upstairs on that occasion.

[35] She testified that during all of these events there was usually someone in the house, but the defendant would listen and would move away quickly if he heard anyone coming. When they were upstairs, he would listen for feet on the cushion floor in the kitchen heading to the stairs. The complainant recalled that once he heard L coming and he got up so quickly that she was thrown to the floor.

[36] The complainant estimated having about two sessions per week with the defendant during the school year. She or her mom would call in advance to see if it was a good time. She is not sure if the defendant was ever paid for helping her. She testified that the "bad things" would happen at least once per week. By grade ten or

11, it was almost every second time. There was no tutoring in the summer and she said it never happened in the summer.

[37] However, in cross-examination, the complainant testified that a different kind of touching happened in the summer. The defendant would go out and play with the kids on the street, and she said he would position himself so that he could touch or caress her, and no one else would notice. The complainant was unsure if this started in grade seven or in grade eight. By the end of her testimony, it appeared that she had settled on it starting at the end of grade seven. It was noted that at the preliminary inquiry she said grade eight.

[38] The upstairs couch events, according to the complainant, occurred through September to December 1983. By December of her grade 11 year, she said the events happened less since the Chambers were preparing to move. The defendant and his family moved in January of the complainant's grade 11 year, which was January 1984. At that point, essentially their contact ended.

[39] However, the complainant notes that she did visit L a few times at their new home; she estimates four times. On one of those occasions, she says the defendant took her on a tour of the new home and grabbed her in one of the bedrooms. She testified that she thought, "I'm finished.", and pulled away and left.

[40] The complainant said that she never consented to any of the sexual touching that she described. She noted, “He was too old. I would never have consented to anything with him.”

[41] She testified that when the touching happened, there were other people in the home 95 percent of the time. They could be anywhere, in the basement at times. The complainant was not sure when they got the television in the basement, but she says the Chambers family mostly watched television in the basement.

[42] She noted that JA also helped her with French homework, maybe two times per week depending on her workload.

[43] The complainant noted that on occasions when she did not go to the defendant for help with math, her marks would drop and her mother would tell her to go back to get more help. She described having trouble in school since grade seven, right through to courses she took as an adult, and she blames the defendant for that. She testified that, if possible, during those years she would avoid the defendant’s home or have someone go with her.

[44] The complainant testified that, over the years since then, she would see the defendant occasionally in public places, and she would avoid him. In 2014, she took her mother to Dartmouth General Hospital for blood work and the defendant

came and spoke to them. The complainant says she was very quiet. Afterwards she said her mother told her she had been rude to the defendant, and wanted to know what the problem was. The complainant said they fought about this for about four days. On cross-examination, she agreed that it could have been anywhere from four to eight days. One day her mother was watching a television program related to child abuse and she asked the complainant if "Bill" had touched her, and the complainant told her yes. The complainant first described this conversation as occurring around August 9, 2014.

[45] She then said that following these discussions with her mother, sometime between April 9 and 10, 2014, she wrote two letters, one to the defendant and one to his wife. When the date discrepancy was pointed out to her, she corrected herself and said the discussions with her mother were also in April 2014.

[46] The complainant testified that she spoke to her neighbour, CS, about these letters, and that CS told her, "I'm driving you there. You're not going by yourself. It's not safe for you to go by yourself." The complainant testified that CS drove her to the defendant's house and told her, "Don't close the front door, leave it open." I infer that that meant CS was expressing concern for the complainant's safety and wanted to keep an eye on her.

[47] The complainant first said the letters were delivered by her to the Chambers on April 12, but then said that the Chambers were not home twice when she came by with the letters, and she was not going to leave those letters in the mailbox. I understood that she was saying that CS drove her on both of those occasions as well. She did not provide any dates for the two previous occasions.

[48] The complainant later in her testimony appeared to be saying that the letters were actually prepared on April 14, and delivered on April 19. I should note that in cross-examination she agreed with defence counsel that the hospital meeting was 2015, and that the letters were written and delivered in June or July 2015.

[49] The complainant further testified that she typed the letters on her laptop, and that her purpose in writing these letters was to tell CC what had happened, and to tell the defendant that he had ruined her life. In cross-examination, she gave further details saying that the purpose of the letters was to tell the defendant not to approach them again. She noted that she typed the letters, she then went to her neighbour CS and asked her to print the letters on CS's printer. She had the letters on an SD card. She inserted the card into CS's computer and printed them on CS's printer. She went home and put them in envelopes.

[50] The complainant told the Court that CS did not help write the letters, she never even read the letters, and at first appeared to be saying that CS knew nothing about these matters. However, the complainant did later appear to agree that, at some point in these events, although it was unclear to me exactly when or under what circumstance, she told CS that the defendant had touched her, and that these letters were related to that. It was noted that, in her statement to police, the complainant had mistakenly said that CS might have helped in, or suggested, the writing of the letters. The complainant responded that the police statement was given very soon after her mother's death. She did not elaborate further, but I infer she was trying to provide an explanation as to why that statement might have contained inaccurate details.

[51] Later in her evidence, the complainant testified that they went to the Chambers home once and no one was home, and then returned on another occasion. Again, I have no evidence as to the timing of these two visits in relation to each other.

[52] The complainant testified that she went to the defendant's house and he answered the door. She asked for CC and he called for her. CC came to the door. The complainant said she then gave CC and the defendant each their letters. She

said nothing and she left. The complainant did not keep copies of the letters, and the laptop is now gone.

[53] It was suggested to the complainant in cross-examination that perhaps the letters had been handwritten by herself and not typed. The complainant responded quite unequivocally that she had typed the letters on her laptop and that they were printed at CS's house.

[54] In cross-examination, there was a great deal of discussion about whether the letters might have raised the issue of compensation. The complainant denied that either letter said anything about seeking compensation. Although at the preliminary inquiry the complainant had said she was not sure if compensation was mentioned in the letters, she now says she has thought about it further and she believes that neither letter mentioned it. She also testified that she did not discuss the issue of compensation at all with CS.

[55] The complainant testified that she did not go to the police in 2014 because she was busy with her mother and her health issues, and did not want to put her mother through any more stress. The complainant testified that she did not seek out the involvement of police herself. Her mother passed away in March 2016, at which time she started talking to her brother JG and told him in general terms what

had happened with the defendant. It was JG who went to the police and told them about her disclosures. The complainant said she did not know he would be doing this nor did she ask him to do this. JG brought an officer's business card to her and she talked to the police about two weeks after that.

[56] On cross-examination, she indicated that while she told the truth in her police statements, more memories have been coming back to her since the time she gave that statement. She explained that she had everything blocked away for so long. She says she did not want to remember these incidents, and that she remembers more and more about the incidents as time goes by.

[57] For example, in her police statement she did not disclose the touching incidents on the couch in the upstairs bedroom, although she now describes about 30 of those incidents happening. The complainant explained this by saying that these memories came back to her after the police statement, when she spoke to a friend about them.

[58] The complainant testified about a vacation that she was invited to go to with the defendant and his family. This was a trip to Florida and a cruise to Mexico and Jamaica, during March break 1981, for the defendant and CC and L and herself. The complainant stated that the Chambers offered to take her as long as she paid

her way, and that she did not want to go, but she knew that if she refused there would be questions asked. She noted that no sexual touching happened during this vacation.

[59] She noted that she knew the defendant was an accountant, an educated man, although she had no idea of his finances or his work schedule. She also did not recall any swimming pool at his residence.

[60] She denies that any sexual touching ever happened with the defendant in his basement rec room.

[61] The complainant further testified that after the preliminary inquiry, which occurred in January 2019, she met with police officer Michelle Dooks-Fahie and Emma Woodburn, who was then the Crown assigned to the file. She said this meeting occurred perhaps a couple of weeks after the preliminary inquiry and at the Crown's office in Dartmouth. She testified that the meeting happened in the afternoon and the complainant described driving to the meeting from her work at [redacted] to the Crown's office. She further stated that during this meeting they talked about what had happened at the preliminary inquiry and about the next hearing coming. The complainant noted that Emma Woodburn asked her about the letters to the Chambers and wanted to know if she (the complainant) had kept

copies. The complainant testified that D/Cst. Michelle Dooks-Fahie said nothing during the meeting; she just watched. She stated that the meeting took about an hour.

[62] In cross-examination, the complainant was asked if she might have been mistaken, had there been no meeting but perhaps just a phone call between them. In the face of these questions the complainant expressed some doubt, but stood by her evidence that a meeting had occurred and that it was in person.

[63] She testified that she sent a text message to D/Cst. Michelle Dooks-Fahie later the same night of that meeting, after she got home, about the letters. The complainant stated that she did not save this text, but that a copy of it was saved in her phone "documents" folder. The text of that document was retrieved by the complainant and is before the Court as Exhibit C-1.

[64] The text in Exhibit C-1 notes that it was created March 7, 2019, which the complainant testified was the day of the meeting, but that it was last modified August 2020. The complainant believes this is a date when she purchased a new phone and the contents of her old phone were transferred. She said the content was never modified and Exhibit C-1 is the entire accurate text of the message that she wrote to D/Cst. Michelle Dooks-Fahie.

[65] The complainant testified that she sent this text to D/Cst. Michelle Dooks-Fahie, and thinks the message showed as “delivered” on her phone. That text, she said, was never again discussed with the D/Cst. or the Crown until it came up in the context of this trial. The complainant noted that she had never texted D/Cst. Michelle Dooks-Fahie otherwise, but that D/Cst. Michelle Dooks-Fahie had texted her once about subpoenas.

[66] Exhibit C-1 was originally entered as part of a defence Charter motion which was later abandoned, but it is an exhibit in the trial proper by consent. The document discusses some aspects of the letters to the defendant and his wife.

[67] Interestingly, and related to an issue that I have already raised in the complainant’s evidence, in the body of Exhibit C-1, there is mention of those letters being dated July 9 and delivered July 12, which are different dates again.

D/Cst. Michelle Dooks-Fahie

[68] I want to now turn to the evidence of D/Cst. Michelle Dooks-Fahie, which was proffered in response to the Charter motion, but which is also part of the trial evidence by consent.

[69] D/Cst. Michelle Dooks-Fahie testified that she was the investigating officer in this matter. She is now in her 16th year as a police officer, and she is now assigned to the homicide unit where she has been for two years.

[70] D/Cst. Michelle Dooks-Fahie testified that she had little independent recollection of the events in question, but was relying mainly on her written file and her written notes of the events.

[71] She stated that she was at the preliminary inquiry of this matter which occurred on January 14, 2019. After the preliminary inquiry, on March 1, 2019, she received an email from Crown Emma Woodburn asking her to speak to the complainant about the letters to the defendant and his wife that had been discussed at the preliminary inquiry. D/Cst. Michelle Dooks-Fahie agreed in her evidence that, having been asked for this by the Crown, she knew that any results she might get would have been important.

[72] D/Cst. Michelle Dooks-Fahie testified that to accomplish this task she spoke to the complainant once and by telephone. She was not sure of the date, but it would have been sometime between March 1 and March 4, 2019. D/Cst. Michelle Dooks-Fahie then has a record of responding to Ms. Woodburn by email on March 4 saying that she had spoken to the complainant and that the complainant had

retained no copy of the letters, either in paper or electronically on her laptop. D/Cst. Michelle Dooks-Fahie believes that the communication with the complainant by telephone would have been that same day.

[73] D/Cst. Michelle Dooks-Fahie remembers nothing else from her discussion with the complainant about this issue. She believes nothing else of substance was disclosed to her; otherwise, she would have disclosed any such information to Ms. Woodburn.

[74] D/Cst. Michelle Dooks-Fahie does not recall ever getting the text message that the complainant referenced. D/Cst. Michelle Dooks-Fahie recalls no text messages between she and the complainant before the preliminary inquiry. She notes that there were text messages after the preliminary inquiry, but only about subpoenas and attendance at court.

[75] D/Cst. Michelle Dooks-Fahie testified that she is well aware and understands a police officer's need to preserve evidence. She told the Court that it is her practice, if she receives text messages, to take a screen shot of the message and keep it for disclosure purposes. She believes that was her practice in 2019 as well. She further believes that if she had received the text message in question, she would have preserved it in that fashion.

[76] D/Cst. Michelle Dooks-Fahie has no recollection of any meeting with the complainant and Emma Woodburn in March 2019. She has no memory of it and has no notes of it. D/Cst. Michelle Dooks-Fahie agreed that she would normally take notes of any meeting or any evidence gathered.

JG

[77] The Court next heard evidence from Crown witness JG. He is the younger brother of the complainant; they are almost 10 years apart in age. He is now a high school teacher.

[78] Mr. G confirmed his family's move to 18 [redacted] Road when he was a very young child, as well as the neighbours living there and the configuration of the street.

[79] JG described having had very little contact with the defendant when he was a child. He knew the defendant worked, but he did not know his occupation. He seemed to be a busy man with no time for kids. JG testified that he never had any problems with the defendant or felt threatened or intimidated by him.

[80] JG is aware that his sister, the complainant, had contact with the defendant through the tutoring one or two times a week. He knew she was friends with the Chambers family and that she had gone on a trip with them.

[81] When the complainant was in junior high and high school, JG would have been between three and four years of age and seven and eight years of age. He described being close with the complainant, but noted that by his grade two year she became more distant. She would spend time in her bedroom by herself. JG recalled that in high school, the complainant was mean and argumentative. She always seemed angry or upset. In his estimation, this lasted for many years.

[82] JG recalls the complainant fighting with her mother about tutoring, about the fact that she hated school and she needed tutoring. He recalls their mom "dragging" the complainant out of the house once. He believes or assumes it was to attend tutoring at the defendant's house. JG agreed, though, in cross-examination that it is not uncommon for teenagers to exhibit lots of drama and emotions.

[83] He says he recalls the complainant going to her room after tutoring. He also recalled tutoring by the defendant with the complainant at his own house, the G house, when he was maybe three or four years old.

[84] JG never saw any inappropriate interaction between the complainant and the defendant. He recalls being in the defendant's house. He recalls first seeing their big screen television when he was four or five, and he recalls seeing a movie there once.

[85] JG testified that he now owns his late mother's house at 127 [redacted] Road, where the complainant continues to live. JG does not live there; he lives at another place with his partner. At 127 [redacted] Road, the complainant pays some bills and JG pays others. While this was not fully explained to the Court, JG appeared to agree that he willingly accepts some responsibility to support the complainant. Again, this area of evidence was not further explored, and that is the extent of the Court's knowledge.

[86] JG confirmed that he was the person who first went to the police and that, to this day, the complainant has never fully told him the details.

[87] JG testified that when he was five, he and the complainant both loved school and she would help him with his homework. The problems he noticed in her temperament came later; he estimated he was in grade two.

[88] JG also testified about an above-ground pool at the defendant's house. He said he swam there maybe twice. He described a circular pool 20 yards in diameter

with a deck. JG further described being told by the complainant very sternly that he should never go there.

CS

[89] The defence elected to call evidence. Their first witness was CS. She is the Executive Director of the [redacted] Association, for whom she has worked for 20 years. CS works from home and lives on [redacted] Road. The complainant is her neighbour, and she explained that they are friendly acquaintances. She has helped the complainant over the years, such as when her mom died, or with drives, help with paperwork, and so on, but, as she put it, they do not "run in the same circles".

[90] Ms. S testified that in 2014 the complainant came to her. The complainant asked CS to bring her somewhere because she (the complainant) was too upset to drive. CS stated that the complainant did not copy or print anything at CS's house that day, although she has used her printer on other occasions.

[91] CS agreed to drive the complainant, but she did not know where they were going. They got into the vehicle and started driving. CS then asked the complainant where they were going.

[92] CS testified that the complainant then told her she had a letter prepared that she wanted to give to someone who had done something to her as a child. CS told her, “You should keep copies of the letter.”, and the complainant said, “I don’t have any.”

[93] CS testified that she did not know about any of this until they were already in the vehicle and driving. She said that during the drive the complainant told her that this person had sexually assaulted her when she was growing up, and she wanted to confront him, and give he and his wife letters. The complainant gave no further details and CS indicated that she did not ask for any.

[94] CS testified that she told the complainant, “I want no part of this. I don’t want to be involved.”

[95] She testified that they drove to his street as directed by the complainant, which only took five minutes. The complainant gave her the directions. She does not know the name of the street. CS testified that she parked three or four houses away from the house because she did not want to see the man and she did not want any part of this. She described being very uncomfortable. She did not know what sort of person this man might be and she was afraid things might get “ugly”.

[96] CS said the complainant got out of the car and she did not see where she went or what she did. The complainant then came back and they drove away. CS said the complainant was upset that day, both on the drive there and on the drive back.

[97] CS testified that the complainant told her that the letters were handwritten on loose-leaf. She said she saw paper folded up in the complainant's hands, but CS did not see or read any writing.

[98] CS also noted that during the drive, the complainant said to her that others had told her that she could perhaps sue this man for money. She testified that she told the complainant, "That is wrong. You should try and get justice, don't do things for the wrong reasons.", and the complainant did not disagree with her. CS testified that at that time the complainant had just lost her mother, who was her whole world, and CS was concerned that the complainant might be manipulated by others.

JA

[99] JA is a retired school caretaker, now 82 years of age. She is the same JA who was the neighbour of the complainant on [redacted] Road. She testified knowing both the complainant and her family, and the defendant and his family.

[100] She described seeing the complainant often. When she was a child, she would visit. JA babysat her after school at times, when she would have been ten to 12 years old, as well as her brother JG and the defendant's stepdaughter L.

[101] JA notes that L and her daughter A were friends; they were the same age. The complainant was also friends with them although she was five years older. All three girls would often be at the Chambers home. JA never saw anything untoward between the defendant and the complainant, and she never saw the complainant be upset to go to the defendant's house. JA would often see the complainant go to the defendant's home after school.

[102] JA recalls the defendant going to university. She's not sure which years, and remembers he later had a job at lumber company.

[103] JA testified there was never a swimming pool, to her knowledge, at the defendant's house.

[104] JA does not believe she ever tutored the complainant in French, but she acknowledged that it was a long time ago and she does not really remember. She also recalled seeing all the children playing in the street, but never saw the defendant there with them.

DK

[105] The next defence witness was DK. He is a friend of the defendant and his wife. He has known the defendant for 45 years.

[106] He confirmed that he and his wife used to go the defendant's house on [redacted] Road about once week to socialize and play cards, normally on weekends. Often his son CK would come along as well. He often saw L and her friends there, including the complainant, but he never really took notice of them. The girls would be with each other and he would be visiting with the defendant and his wife. In fact, DK cannot remember ever speaking to the complainant when she was a child.

[107] He testified that he never saw the complainant and the defendant together, and he never saw the complainant use a typewriter.

William Chambers

[108] Lastly, the defence called the defendant himself. Mr. Chambers testified that he is presently 68 years of age. He is a retired CPA/CGA. He retired in September 2013 from his job as a comptroller at a company. He has one stepdaughter named L.

[109] He confirmed that, from June 1977 to March 1985, he resided with his family at the duplex at 12 [redacted] Road. He confirmed the general layout of the home as described by the complainant.

[110] In the basement of that home was a bar he installed, as well as a big screen television purchased in December 1981. Prior to that there was an old television, which Mr. Chambers says was not used. In 1983, a piano was put there as well.

[111] Mr. Chambers recalled having renovations done to the home in 1983. He is quite certain of that date because he worked at a building supply store then and he got a good deal. Also that year there were tax breaks offered for renovations. He says there was no sliding or pocket door ever installed in the kitchen; that was in the basement. He also noted that there was carpet in the living room going to the upstairs, which muffled the sound, and one would not have heard anyone walking on those stairs. He also confirmed that there was never any pool at that house.

[112] As to the spare bedroom at the front of the house, he agrees that there was a sofa there which, in the fall of 1982, his wife CC took out temporarily and re-upholstered.

[113] Mr. Chambers gave evidence about his education and employment. He attended St. Mary's University in May 1979. He was also working at H.R. Doane 40 to 42 hours per week and studying in the evenings.

[114] In December 1979, Mr. Chambers testified that he faced a taxation exam. He described that from September of that year he was studying three nights per week at home, as well as meeting with other students on other evenings. There would be a weekly paper due every Monday as well. From June to April 1980, he described working 50 hours per week, including Saturday mornings.

[115] In May to June 1980, he took two courses at Dalhousie University which lasted three weeks each. He testified these courses were very demanding; he attended from 9:00 a.m. to 5:00 p.m. each day and then he would study until 10:00 p.m. There was a Saturday exam every week. In September 1980, he took an audit course through to February 1981, again another very demanding course.

[116] Mr. Chambers testified that he remained employed at H.R. Doane, although he was granted some unpaid time off to study in 1981. In September 1981, he had an exam and he did not pass. He started with Dartmouth Building Supply in 1981 and was there until May 1988. He described this as a very busy job with many hours. He helped to set up expansions and computer systems. Mr. Chambers

described this employment as very stressful and, in fact, became quite emotional and actually tearful, for the only time in his testimony, when talking about the amount of hours he worked at that job.

[117] In March 1985, he confirmed that he built a new home in Manor Park and his family moved there.

[118] The defendant said that he first met the complainant when she moved to his street. She was about ten years old and was a friend of L. They were part of a group of three or four girls who played together, and this continued over the years. He did not know her brother JG very well. He noted that the girls would be at his house sometimes, in the living room, bedrooms, or elsewhere.

[119] Mr. Chambers noted that at first the complainant did not come over to his house often, but, with time, her visits became more frequent. Some weeks she might even be there five days a week, although he stated he was not always home so he was unsure of the exact number.

[120] Mr. Chambers recalled that in grade 10 the complainant came over to his house with her math homework and she put her books on their kitchen table. His wife CC took a picture of her on that occasion. That picture is in evidence. He recalled the complainant asking him questions for help with her math homework.

Mr. Chambers testified feeling that his help was informal; that is, he believes she was having trouble in math and someone suggested she bring her homework over to him. On that first day, he recalled that she asked him one question and that was the extent of their interaction. He says this was in September 1982. He described her sitting at the table and him standing over her at that time.

[121] Mr. Chambers denied that he was the complainant's tutor. He described helping her sporadically on occasions when she did homework at his house and if she had a question. Mr. Chambers agrees that the complainant did her math homework at his house a lot in grade 10, but Mr. Chambers stated that he believed she did so even if he was not there. He described a scenario where if he was there she would ask questions, and if he was not there she would ask the next time.

[122] In cross-examination, Mr. Chambers indicated that he had no idea how often he might have helped the complainant with her math homework; there were no scheduled dates. He confirmed that she would be at his place with her homework once or twice week, and if he was there and she had a question he would try and help. Mr. Chambers was unable to answer as to why the complainant would bring her homework to his home other than to seek help from him.

[123] He agreed that her attendance with homework at his home was always after supper, always around 6:00 p.m., always weekdays, always at the dining room table. Mr. Chambers says that there was never any help with homework upstairs. Mr. Chambers also notes that the complainant was only rarely at his home for supper. He believes the assistance with homework was through her grade ten year, on and off. Not so much in grade 11 as he was not home much, and in her grade 12 year he was away with the new house.

[124] Mr. Chambers believed that CC and L were mostly there in the evenings, CC in the living room and L "around". He repeated that he was working a lot during those years and not around very much.

[125] He confirmed that he bought a portable typewriter when L was in grade seven, in 1983, for projects. He saw the complainant use it once or twice, only at the kitchen table.

[126] He also confirmed that the upstairs bedroom did have a desk. It was plain wood and quite small. Only one person could sit under the desk and there were two drawers on the right. The sofa in the room he described as having a high back, two big arms, and two cushions. Mr. Chambers was not sure if the complainant was ever in that bedroom, but he definitely saw her upstairs in L's bedroom. He noted

that the only room in the home that would have been off-limits to the complainant would have been the master bedroom.

[127] Mr. Chambers testified that in September 1982, CC took the couch away for a re-upholstery course. It was gone from September until November or December 1982.

[128] Mr. Chambers also confirmed that he sometimes played with kids on the street, but this was rare.

[129] Mr. Chambers recalled going to Florida in March 1983. He said his wife CC talked to the complainant about going as a friend for L, and she came along. This was a trip to Disney and a one week cruise. The complainant paid for her airfare and the cruise, and the defendant paid the rest. On cross-examination, Mr. Chambers noted that he had practically no interaction with the complainant during this trip, that his wife was entirely responsible for both the complainant and L. Mr. Chambers indicated that he "wasn't crazy" about the complainant going on the Florida trip, that it was his wife's idea. He did not explain why he felt that way.

[130] Mr. Chambers denied that he had ever touched the complainant sexually in any of the ways that she described. However, he did acknowledge one occasion of sexual touching between them. He says it was consensual. He says it occurred in

either December 1982 or January 1983, although it was not clear to me how he was sure of that date. He describes himself as being about 31 years of age. Mr. Chambers testified that this occurred on a weekday and CC and L were both gone, although he does not recall where. He said it was about 6:45p.m., he was home alone and watching television in the basement. The doorbell rang and he answered it. It was the complainant. He told her CC and L were not home, but she chose to come in anyways. Mr. Chambers said he went back down to the basement and sat on the couch, and the complainant followed. He described being seated to the left of the couch and she sat down next to him nearer the centre, to his left.

[131] Mr. Chambers noted that it would not have been common for him to be alone with the complainant. In fact, he was unsure if it had ever happened on any other occasion.

[132] Mr. Chambers then testified that, although he was not sure how it started, they then started joking around and he was tickling her. He said he then reached over and put his right hand under her sweatshirt and touched her bare skin on her left side. Mr. Chambers testified that the way that happened is a “blank” to him. He says the complainant said nothing. He then moved his hand up her side to below her breast, then put his hand under her bra and felt her bare breast for a few

moments. Again, Mr. Chambers testified that the complainant said nothing and had no reaction.

[133] Mr. Chambers told this Court he had “no idea” why he did that. He noted that in his experience the complainant would tell you if she was displeased, so he took her silence as consent. He did not look at her face, so he does not know if she had any reaction.

[134] Mr. Chambers said that he then moved his hand away from her breast and undid the button and zipper of her pants. He then did the same with his pants. He testified that his hope was that she would touch his penis, but she did not.

[135] Mr. Chambers testified that he then put his hand to the top of her underwear area and his intent was to put his hand down her pants and touch her. At that point, he testified that the complainant put her hand on his wrist and pushed his hand away. Mr. Chambers testified that he then knew she was no longer consenting, so he got up, rearranged his clothes, as did she, and then he walked her out. He testified that the complainant was then 16 years old. Again, it was unclear to me how he knew this. The entire event he estimates took about 12 to 15 minutes.

[136] Mr. Chambers testified that he had tickled the complainant in the past, when he would be roughhousing with L and the complainant would join in. This would

be when the complainant was between 12 to 15 years old and L would have been eight or nine. He testified that that happened a few times, although he had no idea how often.

[137] Mr. Chambers was asked if he was worried whether CC or L could have walked in and caught him during this incident. While he agreed that could have happened, he testified that he never thought of that at the time.

[138] Mr. Chambers described having regret about this incident. He said it bothered him for years, but only because he was married at that time. He was very clear in his evidence that, in his view, other than the element of infidelity to his wife, the incident between he and the complainant on that one occasion had not been in any way inappropriate. He repeated that the complainant would have been 16 and the encounter was consensual. His stated regret was entirely and only due to his infidelity to his wife.

[139] When asked in cross-examination if he felt this was appropriate behaviour for him to have engaged in with a 16 year old friend of his daughter, Mr. Chambers was quite emphatic in stating that at 16 the complainant was not a child, she was a young adult. Mr. Chambers did not think he should have made specific inquiries to ensure that he had consent, or that she was comfortable with what he was doing.

When asked what would make him think that the complainant would have been an appropriate sexual partner for him, he could not answer.

[140] He testified that this event in the basement was never discussed with the complainant.

[141] Mr. Chambers gave evidence about the letters he received from the complainant. He said that she brought them to his home in 2014, approximately four to five days after meeting she and her mother at the hospital. He said he answered the door and the complainant was there. She said, “Is CC home?” He said yes and called for CC and he invited the complainant to come in. She gave them each their letters. They were handwritten on lined paper, one for him and one for CC, and she left.

[142] Mr. Chambers described his letter as being about one and a half pages, saying things like, you know what you did, stay away from me, mom said I could get money, I might be able to get money. Of CC’s letter he saw only a few lines. He saw, “Bill did something to me.”, and he also saw that she called CC a “witch”, which surprised Mr. Chambers as he had always thought that CC and the complainant had a good relationship.

[143] Mr. Chambers says that he and his wife then talked, and he then confessed to his wife what had happened with the complainant in the basement of their home when she was 16. He said they kept the letters for about four years, hidden. In 2018 CC destroyed them, thinking it was long enough to keep them, and they did not want L to find them. Mr. Chambers testified that he did not find out they were destroyed until after the police contacted him in June 2018. He noted that, to date, the complainant has not commenced a civil suit against him.

[144] That concludes my review of the most significant parts of the evidence that I heard. I move on to my analysis.

Analysis

[145] The defendant, as with all criminal defendants, is presumed innocent of the charges before the Court. He remains so unless and until the Crown proves each and every element of either offence before the Court beyond a reasonable doubt. That is a heavy burden on the Crown and there is no burden on the defendant.

[146] The charges are essentially split by date, as of the amendment of the relevant *Criminal Code* provisions on January 4, 1983. Prior to that date, the relevant provision of the *Criminal Code* for the offence allegedly committed by the defendant was that of indecent assault, section 149 of the *Criminal Code*.

[147] Following that date, the *Criminal Code* was amended to create various sexual assault provisions. In the indictment before the Court, the offences alleged to have been committed by the defendant are then charged as sexual assault contrary to what was then section 246.1 of the *Criminal Code*.

[148] The elements of an indecent assault, section 149 of the *Criminal Code*, were: 1) the application of force, without consent (At that time the age of consent was 14, which was found in then section 140 of the *Criminal Code*.); and 2) committed in circumstances of indecency.

[149] The elements of sexual assault, which was then section 246.1 of the *Criminal Code*, are well known: 1) the application of force; 2) in circumstances of a sexual nature; 3) without the consent of the complainant (Again, during the relevant period here 1983 to 1985 the age of consent was 14.); and 4) in circumstances where the accused knew or was reckless or willfully blind to the fact that the complainant was not consenting.

[150] I state here for ease of reference that, according to the evidence of the complainant, she would have turned 14 on October 26, 1980.

[151] The defence put forward here is essentially a denial that any of the events described by the complainant took place. This case will turn upon a careful assessment of the credibility and the reliability of the witnesses.

[152] Before I turn to that assessment in this particular case, it is important to understand what we mean when we say credibility and reliability, and the important ways in which these concepts differ. In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152, the majority of the British Columbia Court of Appeal discussed credibility as follows:

> 11 The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

[153] Assessments of credibility were also discussed by Nova Scotian courts in *Baker-Warren v. Denault*, 2009 NSSC 59, (and as approved in *Gill v. Hurst*, 2011 NSCA 100), which provided the following guidelines (at paras. 18 to 21):

> [18] For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" **R. v. Gagnon** 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend

itself to precise and complete verbalization:" **R. v. R. E. M.** 2008 SCC 51, para. 49.

[19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Re: Novak Estate**, 2008 NSSC 283 (S.C.);
>
> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorney** [1952] 2 D.L.R 354;
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[20] I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R v. Norman** (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**, *supra*, at para 37:

> There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1966] 2 S.C.R. 291 at 93 and **R. v. J.H.** *supra*).

[154] A related, but different, concept that must be assessed by a trier of fact is that of a witness' reliability. The relationship between the two concepts was explained in *Cameco Corporation v. The Queen*, 2018 TCC 195:

> [11] The reliability of a witness refers to the ability of the witness to recount facts accurately. If a witness is credible, reliability addresses the kinds of things that can cause even an honest witness to be mistaken. A finding that the evidence of a witness is not reliable goes to the weight to be accorded to that evidence. Reliability may be affected by any number of factors, including the passage of time.

[155] In *R v. Morrissey*, [1995] O.J. No. 639 the Court noted:

> Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable.

[156] In *R. v. Norman*, [1993] O.J. No. 2802 (QL), the Ontario Court of Appeal explained the importance of witness reliability as follows (para. 47):

> ". . . The issue is not merely whether the complainant sincerely believes her evidence to be true; it is also whether this evidence is reliable. Accordingly, her demeanour and credibility are not the only issues. The reliability of the evidence is what is paramount…"

[157] And finally I note the following from *R. v. M.C.J.*, 2015 ONCJ 171:

> [23] In that regard I note the differences between credibility and reliability. Credibility relates to a witnesses' sincerity, whether she is speaking the truth as she believes it to be. Reliability relates to the actual accuracy of her testimony. In determining this, I must consider her ability to accurately observe, recall and recount the events in issue. A credible witness may give unreliable evidence. Accordingly, there is a distinction between a finding of credibility and proof beyond a reasonable doubt.

[158] Given that the defence has presented evidence here, I must apply the principles as set down by our Supreme Court in *R. v. W.(D.)* , [1991] 1 S.C.R. 742. Those principles are commonly described as a three step analysis: First, if I believe the evidence of the defendant, I must acquit. Second, if I do not believe the evidence of the defendant, but his evidence leaves me with a reasonable doubt, I must acquit. Third, if I do not believe the evidence of the defendant and I am not left in reasonable doubt by it, I must then examine the whole of the evidence that I do accept, and determine whether I am convinced beyond a reasonable doubt of his guilt.

[159] I will start with the evidence of the defendant. As I have described in detail, the complainant has put forward a number of allegations of sexual touching that she says were perpetrated by the defendant. The defendant has testified that the events of sexual touching described by the complainant did not happen. According to the first step of *W.(D.)*, if I believe him about that, he is to be acquitted.

[160] Having considered the evidence of the defendant carefully, I have determined that I do not believe the defendant in his denials.

[161] There were many areas in his evidence which I found to be lacking in credibility. For example, I do not accept the defendant’s evidence that the

complainant just happened to be at his house on a consistent and repeated basis, once or twice a week, with her homework, by accident or for no reason. There was no other reason for the complainant to be there with her homework. Certainly neither CC nor L, who was four years younger, could or would have been helping the complainant with her homework.

[162] In my view, the defendant in his evidence made pointed, repeated and conscious efforts to distance himself from the complainant in every way. He made every effort to suggest that his contact with and assistance to the complainant was entirely accidental, entirely random, and remarkably rare. He refused to accept that he was her "tutor", although he accepted that he did help her with homework at times.

[163] In my view, whether the defendant was, in fact, the complainant's "tutor" is immaterial. What is material, in my view, is firstly, that he clearly and obviously did help the complainant with her homework on a regular basis when she was a teenager, and secondly, that he persistently refused to acknowledge it. For the defendant to suggest that the complainant is at his home multiple times a week with her homework, but that this had no connection to him and that he was only answering a rare question here and there is simply not credible.

[164] In relation to the Florida trip, again the defendant made every effort to entirely distance himself from the complainant. He suggested that he had nothing to do with the complainant on that trip even though he and his family spent two weeks together with her, with the then 16 year old complainant as their guest. That is simply not credible in my view.

[165] The defendant also made great efforts to try and persuade me that he was working so much during the years in question that he would not have had the opportunity to commit these offences. I found this evidence from the defendant disingenuous and highly self-serving. The defendant may very well have been working hard during those years, but I reject the notion that his schedule gave him no opportunity to commit the offences. The sessions described by the complainant were of a half hour to 45 minutes, once or twice per week, during the evening hours. The defendant would certainly have been home some evenings, and for such an amount of time. I found that to be a fairly self-serving and somewhat transparent attempt to distance himself from the complainant.

[166] The defendant also talked about the presence of his wife and stepdaughter in the house during the evenings, and how he would never have had enough privacy or opportunity to do the things the complainant described. I reject this. As the defendant was at times helping the complainant with her homework, it would make

perfect sense for both his wife and daughter to leave the room while homework help was being given. The actions described by the complainant would not take much time and could have been stopped quickly in case of interruption.

[167] In summary, I find that, in his evidence, the defendant made every possible effort to entirely distance himself from the complainant in an effort to show that he had no contact with her and no opportunity. To hear the defendant give his evidence, he barely knew of the existence of the complainant and he was barely in her presence. I find his evidence on those points simply not credible.

[168] I want to address at this time the defendant's evidence about the sexual touching he says happened in his basement. That is to say, the event that the complainant says did not happen.

[169] This evidence I have thought about quite carefully. On the one hand, some might say that to make such an admission, when he did not need to, goes to enhance the defendant's credibility. In other words, if the defendant was willing to admit that such an event happened, when he did not have to, that should be regarded as evidence that the defendant is a truthful witness.

[170] I disagree. I have a number of difficulties with the defendant's credibility and reliability arising from his description of the event that he says happened in the basement.

[171] In his recounting of that event, I noted that the defendant was very careful to limit any blameworthiness to his actions. He says that the event was consensual. He was quite adamant that the complainant was 16 on that occasion. He said this despite having spent all of his testimony denying that he knew much, if anything, about the complainant during her teenage years, and claiming that he had had little or no contact with her over the years. However, suddenly, on that one occasion which, in his evidence, happened nearly 40 years ago, he claimed to now be completely sure of her age.

[172] I heard no evidence that he asked her age on that occasion, or otherwise made inquiries to make sure of it. I do not accept that he even thought about it. In my view, his evidence that the complainant was 16 was an attempt to minimize the event.

[173] The defendant put forward his view that since the complainant was 16, that meant she was not a child but a young woman and that, therefore, his attempt to

engage her in a sexual encounter was not inappropriate, except for the fact that he was married.

[174] As a side note, in my view, any reasonable person would find the basement event as the defendant described it entirely and utterly inappropriate, for a whole host of reasons, and certainly not just because the defendant was married. But that was the narrative that the defendant clearly wanted to put forward.

[175] In my view, if this event, or some version of it, happened, I do not accept the defendant's evidence as to when it happened or how old the complainant was.

[176] More generally in relation to the basement event, it seemed to me that the defendant was making every effort to minimize and explain away his behaviour. The story he told this Court is simply not believable and not credible.

[177] In his telling of the events, Mr. Chambers is an adult. He is the father of one of the complainant's friends. The complainant was a teenager. As of the date in question, Mr. Chambers said that he and the complainant had never had any sexual or intimate touching encounter of any kind whatsoever. In fact, he cannot recall if they had ever even been alone together.

[178] He testified that the complainant came over when his wife and stepdaughter were out, he allows her in, and they are alone for the first time he can recall. He

says that within ten minutes of being together, he is touching her in a way that he calls “tickling”. He offers that he had “roughhoused” with her and L before, when they were younger. I have sincere doubts that the defendant ever physically roughhoused with the complainant when she was younger, as he described. Even if that were true, by anyone’s standard it is a completely ludicrous analogy. There is no credibility in the defendant’s claim that he is “tickling” a 16 year old girl the way one might play with a small child. I reject that suggestion of his as being entirely absurd.

[179] The defendant said he really does not know why or how this tickling started on this date; he has a blank about that. Then, suddenly, he says he is putting his hand up under her shirt, onto her bare skin, and then under her bra. He still does not know how or why that happened either; he is still drawing a blank.

[180] Again, none of that had any credibility whatsoever. This was a notable and significant event in the defendant’s life, as he has himself acknowledged. The defendant remembers all the other parts of that event, but somehow he does not remember what was happening for only those few minutes. I consider that evidence to be entirely disingenuous on his part and an effort to avoid admitting what is obvious. What is abundantly clear to me is that if the defendant touched the complainant on that day, he knows and remembers exactly how and why he first

touched her, and he knows how and why he continued to touch her. He does not want to acknowledge that to this Court.

[181] The defendant then told us about making even more intimate advances towards the complainant, in the nature of wanting her to touch his penis and trying to touch her vagina. One presumes that if the complainant had been agreeable, much more advanced sexual touching would have occurred between them. The defendant further testified that, during this event, he never even thought about his wife or stepdaughter coming home and getting caught. Again, entirely not credible evidence. If this event really happened, it was enormously risky behaviour on the part of the defendant for a number of reasons, and common sense tells us that anyone in these circumstances would have been in a heightened state of awareness of the chance of being caught.

[182] It may go without saying, but I will say that, in my view, it is nothing less than astonishing that a person in the defendant's shoes would even attempt such behaviour in these circumstances.

[183] In conclusion, in relation to the whole of the defendant's evidence, it had a number of aspects to it that I found greatly lacking in credibility. A witness who is not credible cannot be reliable. Therefore, as to the first stage of *W.(D.)*, I conclude

that I do not believe the defendant's evidence. I do not believe his denials in relation to the offences alleged by the complainant.

[184] His evidence does not raise a reasonable doubt either. As I have already said, his evidence I find lacking in credibility and reliability, and self-serving. Such evidence cannot be the basis for a reasonable doubt.

[185] In relation to the rest of the defence evidence, it was essentially directed towards pointing out inconsistencies in the evidence of the complainant. This was the evidence of CS, JA and DK.

[186] I would say that all three defence witnesses impressed me as being credible and reasonably reliable. I will say more about the evidence of CS in a few moments.

[187] As to DK, he indicated that he did not see the complainant use a typewriter nor did he see the incident involving the complainant and the defendant while she was using the typewriter in the living room. This was proffered to show an inconsistency in the testimony of the complainant, who said he was there.

[188] I have no reason to disbelieve DK about his evidence. I accept that he did not see any sexual touching between the defendant and the complainant on that day. This was many years ago and was not a significant event to DK, if it was even

he who was present that day. He would have no reason to remember or even notice the complainant or her typewriter. While I accept that he is telling the truth about that, I do not find his evidence to raise a doubt about the typewriter incident nor to be conclusive of anything.

[189] As to JA, she does not recall tutoring the complainant in French as a teenager, which the defendant noted as another inconsistency. Again, nothing turns on this in my view. What the complainant called "tutoring" might have just been informal help, and JA simply does not remember. It was many years ago and JA is now 82 years old.

[190] I, therefore, need to proceed to the third step of *W.(D.)*, an assessment of the evidence as a whole.

[191] I want to first speak about the evidence of JG, who was the second Crown witness. He was a very young child during the time of the events he described.

[192] I want to first refer to some caselaw in relation to evidence given by adults about events that they allege occurred when they were children. I refer to and keep in mind the comments made by the Supreme Court of Canada in *R. v. W.(R.)*, [1992] 2 S.C.R. 122:

> Paragraph 25: "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."
>
> Paragraph 27: "It is neither desirable nor possible to state hard and fast rules as to when a witness' 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."

[193] I begin my discussion of the evidence of JG by saying that I had many difficulties with it.

[194] To be clear, in my view, JG was making efforts to be truthful with the Court. My difficulties did not lay in his credibility, but rather with his reliability. JG is approximately ten years younger than the complainant, which means that he would have been a very young child at the relevant times here, sometimes even as young as three or four. It appeared to me that JG was trying his best to provide accurate information to the Court, but so much of what he said did not accord with other evidence. In my view, his difficulties can clearly be attributed to his young age at the time.

[195] For example, he remembered a swimming pool at the defendant's house and he even remembered specific details such as swimming in that pool twice. He remembered the complainant sternly telling him never to swim there again. It is clear to me from the evidence of other witnesses, and I so find, that there was never a pool at the defendant's home. Again, I do not think JG was deliberately misleading this Court. The simple explanation, and the one I accept, is that he was a small child and he went to someone's pool. He thought it was the defendant's, but he was mistaken.

[196] JG also remembered that, at one point, he and the complainant were close. They enjoyed school. He remembers her helping him with schoolwork, but he says that all changed after a few years. When she started junior high school, she became moody, withdrawn, and disliked school.

[197] But the reality is the dates do not correspond with JG's recollection. JG would have started school at age five, when the complainant would have been 15, and in grade nine already. He says she loved school then and would happily help him, but by her account her difficulties with school started one or two years prior to that, in grade seven or eight, as had the sexual touching by the defendant.

[198] JG says that by his grade two year, the complainant suddenly became withdrawn and moody, at which time he was about seven years old and she would have been about 17 years old, in grade 11. Again, by her account by the time she was 17, the events involving the defendant had gone on for years and were, in fact, nearing an end.

[199] Again, I do not believe that JG was deliberately misleading me. He was a small child and this was 40 years ago. It is not surprising that such a young child could have difficulty with details such as dates or years.

[200] JG described the complainant as a teenager as being angry, moody, and spending a great deal of time in her room. Once again, given his age and the difficulties I have noticed, I am not sure that is reliable. But even if that evidence were true, the suggestion that a teenager is being moody and angry is not really evidence of much in my view. I feel I can take judicial notice that such is not uncommon.

[201] In the final analysis, I have concluded that I do not accept the evidence of JG. Given his age at the relevant times, I found his evidence unreliable.

The Complainant

[202] The complainant was the only other Crown witness, and the only one who testified as a direct witness to the alleged events. I move on to assess the evidence of the complainant.

[203] In this particular case, the complainant would have been a teenager at the time of the alleged offences, between 13 and 17 years of age. I have already cited from caselaw about adults testifying about events from when they were children. My assessment of the complainant's evidence in relation to events she says happened from 1979 to 1985 must take those same principles into account.

[204] In her case, it must be acknowledged that while she was not an adult at these times, neither did she have the more limited cognitive ability of a small child.

[205] The Crown has provided me with additional cases providing judicial commentary about adult witnesses testifying about childhood events, but in many of these cases the person was very young at the time of the alleged events, for example, between three and seven years of age. While the general principles discussed in those cases have some applicability here, there are differences. We must recognize that a person of five or seven is clearly in a different stage of

cognitive development than is a person in their teens, even though both could fairly be called children.

[206] Each case is different and each witness must be assessed individually. All of that is to say that I keep in mind the age of the complainant at the time of the events she has testified to in my assessment, while also keeping in mind that she is now, in the witness box, an adult.

[207] I agree with defence counsel that the complainant's evidence about the layout of the defendant's home is entirely a neutral factor. The complainant was in that home, by all accounts, many, many times. She would have seen all of the rooms she described on many occasions, whether any touching happened or not. So the fact that she can accurately describe the defendant's house, including the upstairs bedroom, is not determinative or confirmatory of anything.

[208] I start this analysis by saying, in relation to the evidence of the complainant generally, I had concerns.

[209] First, from the very start of her evidence, I noticed that the complainant was prone to mistakes. She would fail to correct those mistakes on her own, unless and until they were pointed out to her. Now, frankly, at the beginning of her testimony these mistakes were minor and did not seem at all serious to me. All witnesses

make simple or silly mistakes, usually attributable to nervousness in testifying before a court, which is a novel and intimidating experience for most.

[210] So, for example, the complainant was asked the year of her brother's birth. She answered 1956. She did not correct herself. Only when Crown counsel questioned that date, did the complainant correct herself and say 1976. She was asked where she lived as a child, she answered 118 [redacted], then only when asked again, did she correct that to 18 [redacted].

[211] As her testimony continued, she made more of these same types of mistakes. I mentioned a few more earlier when I summarized her evidence.

[212] As I have already said, on their own, and at the beginning of her testimony, those small inconsistencies or mistakes seemed quite insignificant, particularly given the amount of detail that the complainant was being asked to testify to. However, as her testimony continued, their cumulative effect became more significant.

[213] The complainant provided a great deal of evidence and a great deal of detail about the sexual touching she said she experienced during the years in question. However, there were discrepancies in her evidence. For example, I want to address the incident that, in direct, the complainant said happened first; the incident when

the defendant touched her body while they were in the kitchen putting away dishes. I must acknowledge that, as I sit here today, I am still unsure about her evidence as to that incident. She told this Court it happened once, but she then said it happened more than once. I do not know how or when the other times happened. At first there was no tutoring on that day and then there was tutoring on that day. It is entirely unclear to me when this or these events happened, how old she was at any of the times, or, in fact, when these events happened in relation to the other touching she described.

[214] Another example, she testified that she attended for tutoring with the defendant from one to three times a week. Assuming I accept that evidence, that would mean that in a month they would have met a total of four to 12 times. She also said that the sexual touching would not occur every time they were together.

[215] She said that the defendant progressed from touching her leg over her clothing, which happened a dozen times, to then moving on to rubbing her crotch area over her clothing, which happened 48 to 50 times, and then moving on to rubbing her crotch area under her pants and over her underwear. She then said that progression from the rubbing her leg to putting his hand inside her pants took about a three month span of time.

[216] This evidence is not consistent within itself. Her estimate of the number of events of touching so far adds up to over 60 events. But in three months, they would have only met 12 to 36 times and, according to her evidence, the touching did not happen every time. I am left in uncertainty about these details.

[217] Having said all of that, I accept that all of these mistakes could easily be explained by her age at the time and by the number of years that have gone by since. I suspect none of us would remember exact dates and times from when we were 13 or 14, 40 years ago.

[218] No witness is perfect and no testimony is perfect. That is not what the Court seeks or expects. We do not expect witnesses to recite dates and times with absolute precision as if they were computers, especially where historical sexual assaults are concerned. Even with that frame of mind, however, I found that the cumulative effect of the complainant's mistakes caused in me a growing concern.

[219] My greatest concern lay in the tendency that I noticed in the complainant throughout her testimony, that of answering questions unequivocally, only to acknowledge a few moments later, and only when asked, that she had made an error. It appeared to me that the complainant had a noticeable tendency to be somewhat careless with her answers.

[220] As the complainant's testimony continued, there were much more significant discrepancies to come. In fact, some of the most serious inconsistencies in the complainant's evidence are not in her recounting of childhood events. They exist, rather, in more recent events that occurred when she was an adult, only a few years ago.

[221] I note her evidence in relation to the letters delivered to the Chambers in 2014.

[222] The complainant's description of the events surrounding the creation and delivery of those letters is very different than that of CS. There were multiple inconsistencies. I will not list them all because anyone hearing my summary of the evidence of both would have heard the multiple ways in which they differ. In particular, relating to the way CS got involved that day, the discussions between the two, whether the letters were handwritten versus printed, the one trip versus multiple trips, and so on.

[223] The complainant was very unclear about the dates of the creation and delivery of these letters, first saying it was August 2014, then when she was corrected she said April 2014, then later she said June or July 2014, and

alternatively even June or July 2015. This, again, was consistent with my observations about her evidence in general, that she was a witness prone to error.

[224] CS was an independent witness and, in my view, she was a very credible and reliable witness. She testified in a very careful and straightforward manner and was entirely independent to these matters. She would have no reason to invent or embellish her evidence. This was clearly an unusual event in her life that she was describing. She described having concerns as it was occurring about her safety and about the complainant's vulnerability to being taken advantage of. CS would have been aware of the significance of these events. She would have every reason to remember these events clearly.

[225] I accept the evidence of CS about what happened on that day and, in particular, where it conflicts with the evidence of the complainant, I accept CS's version. In particular, I find that the complainant did not use CS's printer to print the letters and that the complainant told her the letters were handwritten. I find that the version of events told by CS is accurate. I find that the evidence given by the complainant about the creation and delivery of the letters is incorrect in many aspects.

[226] I would finally note, as to this particular evidence, my observation was that the complainant, in her testimony about it, expressed a great deal of confidence. This made her inconsistencies relating to these events particularly concerning to this Court.

[227] In another part of her evidence, the complainant also clearly recalled and described details of a meeting she had with D/Cst. Michelle Dooks-Fahie and the Crown in March 2019, following the preliminary inquiry. She says she later sent D/Cst. Michelle Dooks-Fahie a text message she had written.

[228] As I earlier indicated, D/Cst. Michelle Dooks-Fahie testified and said she had no recollection of any such meeting, has no notes of it, and does not believe she received that text. I find that as an experienced police officer, D/Cst. Michelle Dooks-Fahie would know about the importance of keeping evidence and keeping notes of events. Police officers are evidence gatherers by profession. I find that had that meeting occurred, she would either recall it or at least have notes about it; if that text had been sent, she would have kept a copy of it. I accept her evidence, and I find that there was no meeting between she and the complainant and the Crown in March 2019.

[229] I must conclude that the complainant's testimony about that meeting was also inaccurate and incorrect.

[230] The events involving the letters appear to have happened in 2014, which is not that many years ago, when the complainant would have been in her late 40s. The events surrounding the meetings with police would have occurred around 2018, so only two years prior to the testimony of the complainant before me, when she would have been over 50.

[231] The inaccurate testimony on the part of the complainant in relation to those events cannot possibly be attributed to her being a child, or to the passage of time. At the risk of repeating myself, it was my conclusion that the complainant was, to put it simply, a witness who was generally prone to making mistakes.

[232] In relation to the meeting with the Crown and police, it is quite likely that the complainant did have face-to-face meetings with the Crown and police on other occasions, and she is simply misremembering another meeting she had. In relation to the letters, I accept that the complainant had on previous occasions come over to use CS's printer and, again, she is mistaken that she did it this time.

[233] It was noted to the complainant, and she agreed, that her allegations seemed to evolve from the time she first made the allegations to police, through the

preliminary inquiry, and to the trial. This was either to include more detail or, more concerningly, more and different events of sexual touching. The most significant example brought out during her testimony was of the incidents of sexual touching in the upstairs bedroom which she now estimates happened 30 times, but none of which were disclosed to police at the first statement.

[234] The complainant provided a few explanations for this. Mainly, she stated that she just keeps remembering more and more things as time goes on. She stated that she had everything blocked away for so long, and that she did not want to remember these “disgusting” things. She said that these new memories have been ongoing.

[235] For the purposes of my task, it is a challenge to know what to do with that. It is certainly not uncommon for victims of sexual assault to say that they “blocked out” the memories of the assaults as a way of coping. And it would not be unreasonable that, as a result of this “blocking”, the complainant has not thought about these events in many, many years, and she must now struggle to remember, and/or that all of the memories do not come at the same time or completely. All of that could very well be true.

[236] The complainant also noted that her mother had just died at the time of the police statement and, while she did not elaborate, I infer that this was a difficult period in her life and perhaps she was not thinking as clearly as one would have hoped. That could also be true.

[237] On the other hand, it is also possible that the complainant has difficulties with accuracy and completeness generally. I have described observing that throughout her testimony.

[238] To be perfectly frank, I found her testimony to be very challenging to summarize because there were times when her description of an event would evolve with each telling. In drafting this decision, I will admit to spending literally countless hours, listening and re-listening to the recording of the complainant's evidence, so as to ensure that I had captured each and every time she described a particular event. This was a laborious process in her case because often if asked to clarify, or to discuss an issue again, the complainant would add details, or she would correct the details she had already given, or she would correct the date she had given, and so on.

[239] The bottom line is this: I do not know the reason for the complainant's difficulties. Whatever the reason, whether it was because of this blocking of

memories, or whether it was because she has difficulties with accuracy generally, the end result is the same. The difficulties she exhibited with accuracy and completeness had real impacts on her reliability. As her evidence progressed, I became more and more doubtful about the complainant's ability to give a simple and accurate recounting of events.

[240] I do want to make some comments about two issues raised by defence counsel which, in my view, did not affect my assessment of the complainant's credibility and reliability.

[241] First, whether the letters she gave to the Chambers were seeking compensation. Those letters are now gone. I make no finding about whether they actually said anything about compensation or not. In my view, that is a non-issue for the Court. I say that because whether or not the complainant sought compensation from the defendant in that letter, that is not evidence of anything. Sometimes people who have been genuinely harmed seek compensation, and I have no doubt that deceitful people seek money in deceitful ways. So, for my purposes, whether the complainant sought compensation or not in those letters is entirely irrelevant.

[242] The compensation issue is relevant, however, in relation to the fact that I accept CS's evidence about the discussions she had with the complainant, and I reject the complainant's evidence that they did not discuss it.

[243] Secondly, there was some discussion and questioning as to the reasons why the complainant did not disclose these events to anyone at the time she says they happened, and how and why she delayed these disclosures until the more recent past. The complainant testified that she had a number of reasons for not disclosing the sexual touching at the time: the fear that her father would retaliate against the defendant and get into trouble, fear for her younger brother's safety, generalized fear of police, and so on. The defence put forward the argument that these reasons were not credible or that the Court should look upon those with skepticism as being unfounded fears.

[244] The simple fact that the complainant did not disclose any of this at the time it was allegedly happening cannot be, and is not, the subject of an adverse finding against her. In general terms, it has been made clear in both caselaw and literature that there are many and varied reasons why a victim of sexual assault might delay disclosing it, or might never disclose it.

[245] In this case, during the time captured by the indictment, the complainant was a teenager. Her fears about disclosing these events might not have been entirely and perfectly logical to us as adults, but she was a teenager and they made sense to her. That area of evidence had absolutely no impact upon my assessment of the complainant's credibility or reliability.

[246] In the final analysis, my concerns about the complainant's evidence are not in relation to credibility. I do not think the complainant was trying to mislead the Court, or was deliberately telling untruths. I believe she was making sincere efforts to be truthful in her memory of events as she recalled them. In my view, many of the usual indicators of credibility were present in her testimony, as I described them at the beginning of this decision. Her demeanor was certainly that of a person giving frank and forthright evidence. She testified in a candid and straight forward manner. I did not find her purposefully evasive or strategic or self-serving. She was quite sure of herself in much of her evidence. She was essentially unshaken in saying that she was sexually touched by the defendant during her teenage years, despite a very lengthy cross-examination.

[247] But, on so many occasions, despite her very sincere recounting of an event, and despite her being quite convinced that she was accurate, she simply was not accurate. In other words, it is her reliability that is in question.

[248] I should note that I was given no evidence that the complainant suffers from any cognitive disabilities that might explain some of this. I must assess her as I would any adult witness, albeit an adult witness whose evidence relates to both childhood events as well as more recent events.

[249] Turning back to the complainant's evidence about the sexual touching that she says occurred from 1979 to 1985, I have no independent witness who could either challenge or corroborate her version of events. According to the evidence of the complainant, the sexual touching always happened when she and the defendant were alone together.

[250] There were other witnesses who testified and confirmed some of her evidence; for example, the layout of the homes, the friendships between the various parties and families, and so on. However, there was no independent witness who could either corroborate or challenge what actually took place between the complainant and the defendant when they were alone.

[251] Let me point out some very important and fundamental first principles about that circumstance. Firstly, it is not at all unusual in cases of alleged sexual touching, or abuse, that there are no independent witnesses and no corroboration. In fact, the caselaw and literature make it clear that such is the norm in these cases.

The very nature of sexual assault or abuse, particularly of children, is that it is carried out in private, with no witnesses.

[252] I also want to be very clear that there is no legal requirement for any corroboration of the complainant's evidence in a criminal case. It is not required.

[253] However, in a case such as this one, where the defendant's guilt hinges on one witness and the Court has concerns about that witness' credibility or reliability, or both, independent or corroborative evidence could be helpful. Here there was none.

[254] So I am left with some difficult realities. As I have said many times, in the course of her evidence I found the complainant to be a person who made many errors as to the details of events, both major and minor errors. Further, on each occasion where the Court did have independent evidence as to events described by the complainant, that independent evidence was accepted and the complainant was shown to be wrong in her evidence about both major and minor details.

[255] I am left with a reasonable and significant concern that if the Court did have independent evidence about the events of 1979 to 1985, that evidence would also show the complainant to be mistaken in her evidence.

[256] As to the assessment of reliability as opposed to credibility of witnesses, I note the following quote from the Ontario Court of Appeal in *R. v. Stewart*, [1994] O.J. No. 811 at para. 19:

> I am not satisfied, however, that a positive finding of credibility on the part of the complainant is sufficient to support a conviction in a case of this nature where there is significant evidence which contradicts the complainant's allegations. We all know from our personal experiences as trial lawyers and judges that honest witnesses, whether they are adults or children, may convince themselves that inaccurate versions of a given event are correct and they can be very persuasive. The issue, however, is not the sincerity of the witness but the reliability of the witnesses' testimony.

[257] Further in *R. v. Sanichar*, 2012 ONCA 117 at p. 38:

> [38] In such cases – cases evolving out of allegations of distant events, including allegations involving historical acts of physical and sexual abuse – particular caution and scrutiny are called for in approaching the reliability of evidence…
>
> [39] Minden J. discussed these cautionary considerations in *McGrath*, at paras. 11-14:
>
> > …
> >
> > In that regard, a number of factors should be kept in mind. A witness' difficulty in recollection due to the passage of time must not lead to an "undiscriminating acceptance" of his or her evidence. A trier of fact must pay particular attention to serious inconsistencies in the account, as well as to significant inconsistencies between present testimony and prior accounts. Such inconsistencies may disclose unreliability: see, for example, R. v. G.G. (1977) 115 CCC (3d) 1 (Ont. C.A.). <u>There must be a rigorous analysis of whatever independent, extrinsic evidence still exists.</u> (emphasis is mine)
> >
> > A trier of fact must be aware that an apparently honest, confident or convincing witness may not necessarily be an accurate witness: see R. v. Norman, supra. Nor does an abundance of detail in the recounting of an event necessarily imply an accurate memory. As well, a trier must bear in mind the "subtle and not so subtle influences" that may have over time distorted memory.

[258] I also want to refer to another case that highlighted the importance of the reliability of witnesses in criminal cases, *R. v. D.R.*, 2018 ONCJ 518. In that case the Court found the complainant to be credible, truthful, and sincere. The Court goes on to say:

> [5] Simple belief in the complainant's credibility does not end the analysis in a criminal trial. The analysis does not end with an endorsement of the complainant's credibility. I am obligated to assess the totality of the evidence with the criminal burden of proof in mind. Were the test a balance of probabilities, the civil standard, I would find in favour of the complainant's evidence on some of the allegations, But this is a criminal trial. The prosecution must prove the case to the criminal standard. That is, proof beyond a reasonable doubt. Any doubt must be resolved in favour of the defendant.

[259] I believe the complainant was a witness who made her best efforts to give truthful information to the Court. She herself was quite sure that what she was saying to the Court was both truthful and accurate. However, I find the complainant had great difficulty giving accurate and complete information. Having reviewed her evidence, frankly countless times, I find that the cumulative weight of the complainant's errors and mistakes simply cannot be ignored.

[260] To use the words of the Court in *R. v. G.(M.)* (1994), 93 CCC (3d) 347 (ON CA) and *R. v. M.(A.)*, 2014 ONCA 769, I find that the cumulative effect of the inconsistencies in the complainant's evidence demonstrates a "carelessness with the truth", which causes me as the trier of fact to be concerned.

[261] In particular, I quite simply find myself incapable of relying on the complainant's evidence with any degree of confidence as to the details of the events she described: of her age at the relevant times, of the events themselves, of the sequences of events, of the locations of events, of the number of times, of issues surrounding consent, and so on.

[262] We often say to juries when we instruct them that even if we conclude that events probably happened, or likely happened, that is not enough to ground a criminal conviction. To be perfectly frank, that is the position in which I find myself. Having considered the entirety of the evidence before me in careful detail, and for the reasons I have just explained, I find the whole of the evidence has left me with a reasonable doubt, and by law the defendant is entitled to the benefit of that doubt. He is entitled to an acquittal.

[263] Before concluding the matter, however, I need to lastly consider the sexual touching that the defendant says happened in his basement. It is an event that, at least in theory, could constitute an indecent or sexual assault within the dates contained in the indictment.

[264] The complainant says this event did not happen. I repeat that I found the complainant's evidence as a whole unreliable, and that includes her evidence about this event. In other words, I reject her denial that this happened.

[265] The only evidence I have about this event is that which came from the defendant. I have made no secret of the fact that I reject much of the defendant's version of events as to what took place on that occasion. As I said, I do not accept as a fact that it happened when the complainant was 16, nor that it happened the way the defendant described.

[266] I have no other evidence about this event, therefore, that could theoretically be the end of the matter. But I feel more should be said, as this alleged incident in the basement is a somewhat unusual circumstance. It is not typical in a criminal case for a defendant to disclose an entirely new event in his own evidence, which could potentially constitute an offence. It seems to me I need to fully explain my thought process about this.

[267] What I am about to say is entirely speculative. Speaking hypothetically, there are many possibilities about that basement incident. It is possible that some incident of sexual touching did occur in the defendant's basement, and the complainant simply does not remember it. It is also possible that an incident

occurred between the complainant and the defendant in that basement and that the defendant's version is accurate in some ways but not in others. It is also possible, in my view, that nothing ever happened in the defendant's basement and that those basement events were entirely fabricated by the defendant.

[268] I say that is a possibility because of the circumstances in which that event was first disclosed. The defendant testified that when he and his wife received the letters containing the complainant's accusations, he and his wife spoke. This is when he first admitted to her that an incident had, in fact, occurred with the complainant, in the basement of their house; the incident he described being a relatively minor incident of consensual sexual touching with a 16 year old girl.

[269] It is entirely possible, in my view, that this was quite simply a story entirely fabricated by the defendant in order to explain and minimize the accusations made by the complainant in the letters. It is also entirely possible that having told that story then, the defendant now feels compelled to repeat it.

[270] Again, I acknowledge I am speculating and these are all just possibilities. I only state them here to explain why, in relation to the basement incident, I am unable to confidently find any facts. I cannot say with confidence that there was

ever any incident of touching between the defendant and the complainant in the defendant's basement, much less make findings about what actually happened.

Conclusion

[271] Having made the above noted findings and conclusions, I find I am left with a reasonable doubt about the defendant's guilt. I must find him not guilty of the charges before the Court.

Boudreau, J.