

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v Willis*, 2022 NSSC 376

Date: 20221221

Docket: Hfx No. 493769

Registry: Halifax

Between:

His Majesty the King

v.

Carie Dexter Willis

Restriction on Publication: ss. 486.4, 486.5, and 539(1)

Judge: The Honourable Justice D. Timothy Gabriel

Heard: September 6 – 9 and 12 – 16, 2022, in Halifax, Nova Scotia

Final Written Submissions: November 18, 2022

Oral Decision: December 21, 2022

Written Release: December 22, 2022

Counsel: Jane Mills, for the Provincial Crown
Mark Knox, K.C. and Michael Potter, for the Defence

By the Court (orally):

[1] Carie Dexter Willis is charged as follows:

1. THAT he between the 24th day of June, 2003 and the 8th day of December, 2003 at, or near Dartmouth, in the County of Halifax, in the Province of Nova Scotia, did unlawfully commit a sexual assault on A.A., contrary to Section 271 of the *Criminal Code*.
2. AND FURTHER that he at the same time and place aforesaid, without reasonable justification or excuse and with intent to obtain sexual favours, did induce A.A. by threats to report her location to Canada Border Services Agency for deportation, contrary to Section 346(1.1)(b) of the *Criminal Code*.
3. AND FURTHER that he at the same time and place aforesaid, being an official, a Canada Border Services Agency Enforcement Officer did commit a breach of trust in connection with the duties of his office by breach of trust, contrary to Section 122 of the *Criminal Code*.

[2] This is his second trial in relation to these charges. His first, reported as *R. v. Willis*, 2018 NSSC 237, resulted in his conviction on all three charges. This decision was overturned in *R v. Willis*, 2019 NSCA 64, and the matter was remitted for a new trial: this one.

[3] At the outset, to merely observe that the evidence of the complainant and the accused conflicts would be to understate the issue. The evidence that has been offered by each in this case is starkly contrasting and irreconcilable. As a consequence, it is important to set out the framework within which the evaluation of that evidence will occur.

[4] Reference is often made to the decision in *R. v. W.D.*, [1991] 1 SCR 742. The structure set forth therein assists in determining the proper application of the burden of proof as the trier of fact considers the competing versions of what is alleged to have occurred. In *W.D.*, the Supreme Court of Canada offered this guidance:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused. (*W.D.*, at p. 758)

[5] This is not a mere litany or formulaic utterance. But what is immediately clear is that the evaluation of the evidence in this case must not resolve itself into a mere credibility contest between the complainant and accused. Were this not so, the exercise would become one in which the accused would be obliged to provide a more credible account than that which had been offered by the complainant. Such a state of affairs would, in effect, reverse the onus of proof by requiring the accused to "disprove his guilt". This would conflict with the presumption of innocence which he enjoys unless and until the Crown is able to prove his guilt beyond a reasonable doubt.

[6] The Crown has referenced *R. v. Nyznik*, 2017 ONSC 4392. In that case, Molloy, J. characterized the application of these principles to a sexual assault case thus:

12. First of all, the very nature of the act underlying a sexual assault usually means that there are seldom any eye-witnesses apart from the complainant and the person or persons accused of the offence. Often, these cases come down to the word of one person against the other -- the classic "he said/she said" scenario. In that situation, it would be wrong for the trial judge to decide the case based on which is the more credible version of the two. To do so would be to misapply the burden of proof on the Crown to establish guilt beyond a reasonable doubt. The correct application of the burden of proof requires the judge to acquit if the evidence of the accused, when seen in the context of all of the evidence, raises a reasonable doubt as to his guilt. It is possible that the judge might not fully believe the defendant's version of the events, and might find the complainant's version to be more credible, but still be uncertain as to what actually happened. In that situation, there is a reasonable doubt, the benefit of which must go to the defendant, even where the complainant's story is more plausible or more believable than that of the defendant.

[Emphasis added]

[7] Further on, in *Nyznik*, the following additional observation was made:

16. It is sometimes said that the application of these principles is unfair to complainants in sexual assault cases, that judges are improperly dubious of the testimony of complainants, and that the system is tilted in favour of the accused. In my opinion, those critics fail to understand the purpose of a sexual assault trial, which is to determine whether or not a criminal offence has been committed. It is essential that the rights of the complainant be respected in that process and that

decisions not be based on outmoded or stereotypical ideas about how victims of assault will or will not behave. However, the focus of a criminal trial is not the vindication of the complainant. The focus must always be on whether or not the alleged offence has been proven beyond a reasonable doubt. In many cases, the only evidence implicating a person accused of sexual assault will be the testimony of the complainant. There will usually be no other eye-witnesses. There will often be no physical or other corroborative evidence. For that reason, a judge is frequently required to scrutinize the testimony of a complainant to determine whether, based on that evidence alone, the guilt of an accused has been proven beyond a reasonable doubt. That is a heavy burden, and one that is hard to discharge on the word of one person. However, the presumption of innocence, placing the burden of proof on the Crown, and the reasonable doubt standard are necessary protections to avoid wrongful convictions. While this may mean that sometimes a guilty person will be acquitted, that is the unavoidable consequence of ensuring that innocent people are never convicted.

[Emphasis in original]

[8] The merest touch of another person, if intended by the perpetrator, and unwanted by the recipient, constitutes an assault. A "sexual assault" is an assault which, under all the prevailing circumstances, is sexual in nature. Sometimes, whether the contact was "unwanted", which is to say, whether the recipient consented to it, is a live issue. As s. 273.1(1) of the *Criminal Code* tells us, "consent" means "the voluntary agreement of the complainant to engage in the sexual activity in question".

[9] In this case, of course, the issue of consent is not engaged. Mr. Willis says that the encounters alleged by the complainant never took place at all. He took the stand and testified, hence the earlier reference to the tripartite test in *W.D.*

[10] With these general principles in mind, it is now appropriate to consider the evidence, as well as the application of these principles to that evidence.

The evidence

(i) The complainant

[11] The complainant (to whom I will refer as A.A.) testified that she was born in Nigeria and is the daughter of a Nigerian diplomat. She, along with her sister and brother, arrived in Canada in 1996 to further their education at Dalhousie University in Halifax, Nova Scotia. Her father paid for their travel expense, and the idea was that he would pay their living expenses while they pursued their university studies.

Neither the complainant nor her brother completed their education. Both left the university without getting a degree. Subsequently, the complainant took a cosmetology course at the local business college, but only lasted there for about a month. She did not advise her parents to this effect, however, and they continued to send her money under the belief that she was still a student. She admitted this in her direct testimony.

[12] The Student Visa, which she had obtained in order to permit her to study in Canada, expired in 1996. She was able to get it renewed by enrolling in the cosmetology program for a month. However, the "renewed" Visa itself expired in 2001.

[13] Her stated object, at all times, was to remain in Canada. In fact, although a Nigerian national, she had spent much of her life abroad. Her father, being a diplomat, was often posted abroad during her formative years. She mentioned, in particular, postings in Germany (five years), then back to Nigeria (three years), then Ethiopia (three years), and then back to Nigeria again.

[14] Upon the expiry of her student Visa in 2001, she decided to apply for refugee status. As she stated, the idea of going back to Nigeria was not attractive to her. Even her parents were no longer living there by this time.

[15] When she applied for status, she noted two principal reasons on her application to buttress it, and thereby further her attempt to remain in the country. First, she stated that she had a fear of female genital mutilation should she be returned to Nigeria, and second, that she would also be forced into an "arranged marriage" if she returned.

[16] She acknowledged that neither expressed "concern" was true, although she did say that the second one was somewhat legitimate because her parents were, in fact, pressuring her to get married. She was granted a hearing in November 2002, but the Board was not satisfied that she had made out a case for a refugee claim, and her application was dismissed. Meanwhile, A.A. had obtained a job around the middle part of 2002. She remained so employed for about a year. I will refer to her employer as "C".

[17] The rejection of her claim for refugee status prompted A.A. to obtain legal advice. She consulted with the lawyer who had assisted her brother in obtaining his permanent residency in Canada. As a result of the advice that she received, she went

to immigration offices (to which I subsequently refer as "CIC"), which were then located on Brunswick Street, in Halifax.

[18] This visit took place in January 2003, shortly after she had received notification of the denial of her application for refugee status. As she described it, she just showed up without an appointment. After waiting approximately ten minutes, someone came to meet with her. That "someone" was the accused, Mr. Willis.

[19] She described him as a black male, approximately 5'10" in height, with a strong build, bald head, and at the time appeared to be in his mid to late 30s. He was not wearing a uniform, and although he did not immediately identify himself, he did at some point tell her that his name was Carie Willis.

[20] A.A. testified that the accused brought her into another room. There was another man there, she did not recall his name, but he was Caucasian, in his late 20s to 30s, with brown hair and blue eyes. There was a rectangular shaped table in that room, she sat to the right of it, and Mr. Willis and the other officer on the left. She felt that the former was in the lead with respect to the conduct of the interview, which lasted approximately 30 minutes, while the latter seemed to be in a supportive role.

[21] During the course of that meeting, Mr. Willis explained that he was an enforcement officer assigned to her case, and that his responsibility was to ensure that she was deported from Canada as required by law. He asked her some questions as well, including where she worked, did she enjoy working there, and whether she was in a relationship with anybody.

[22] She testified that she advised him that she worked at C, "it pays the bills", and that she was "not married or in a relationship". The complainant also testified that she told him where she was living. When she testified, she recalled that she had been living (in early 2003) on F. Street, but could not remember the particular civic number of her apartment building. She said that she also provided Mr. Willis with her phone number at the time, which was a landline.

[23] They also discussed the fact that A.A. had been advised to request a Pre-Removal Risk Assessment, a process that is commonly known by its acronym PRRA. The complainant testified that she was aware that a PRRA request was, in effect, a "last-ditch effort to be allowed to remain in Canada". At the conclusion of the meeting, A.A. returned to her lawyer's office, so they could, as she put it, "start strategizing".

[24] The complainant said that the PRRA process essentially required the preparation of an essay, whereby one is expected to explain why injustice would result if the deportation occurred. She said that her lawyer filled it out for her, and submitted it.

[25] In February 2003, approximately one month after having first gone to CIC, A.A. testified that she received a phone call from Mr. Willis, who advised her that her request had been denied. He also told her that she had to go into his office personally in order that he could provide her with the rejection letter. She said that she cried while on the phone after having learned this.

[26] Since she did not go into his office immediately, Mr. Willis was required to further contact her about it. Eventually, A.A. did go in after "playing phone tag" for a while. At some point, later in February 2003, she again went to the CIC building, at which time the accused handed her the rejection letter. She did not recall anyone else besides him being present when she took receipt of the letter.

[27] She described feeling terrified and lost. She went home and called her lawyer to ask if there was anything else she could possibly do. She recalled receiving advice to the effect of, "no, that was our last chance. I cannot help you once the process of deportation has been started".

[28] But she testified that she did receive another phone call from Mr. Willis. This took place sometime in May or early June of 2003, at a time when she was still working for her employer, C. She testified that the accused placed a phone call to her apartment and she answered. He asked her if she wanted to meet to discuss her options. A.A. said yes, and chose the venue, a Tim Hortons restaurant proximate to where she was living at the time.

[29] When asked to recall the meeting, she did so in detail. She says that she was the first to arrive and that Mr. Willis arrived maybe 15 minutes later wearing civilian clothes, consisting of (she thinks) a black pair of trousers and a shirt, which was maybe brown. They sat at a table by themselves, in her words, and reviewed her options. The complainant recalled asking him if it would help her situation if she were to marry a Canadian. She described Mr. Willis's response as indicating no, that would not work because the process had already started. That was the only "option" that was discussed during the meeting.

[30] A.A. said that the accused complimented her on her smile, and asked her again if she was in a relationship with someone else. She described the meeting as relaxed,

and the accused as friendly and personable. She said he did not seem to be acting in the capacity of a Canada Border Service Agency (CBSA) Officer. In her opinion, he seemed like a nice person, someone who was concerned about her well-being. She said, however, that she received no personal information from Mr. Willis at that meeting.

[31] Not long after the meeting at Tim Hortons, she received another call from Mr. Willis. This call was to discuss the removal process. Initially, she testified that he told her that the removal date was to be June 29, 2003. She said he also alluded to the fact there were some others being deported that day who had criminal records, and said that he did not want her to be on the same flight with them, so he was attempting to rearrange her flight for June 24, 2003.

[32] The night before the intended departure, on June 23, 2003, A.A. testified that she received another phone call from Mr. Willis. He wanted to know what preparation she was making to get her affairs in order in so that she could be ready for her flight the next day. A.A. described herself as nervous, and said the whole situation seemed "surreal". Mr. Willis asked her if she had made it known to her landlord that she was leaving.

[33] A.A. recalls saying to the accused "would you like to come over?" He responded in the affirmative and called her again upon arrival at her apartment. This was around 5:30 p.m. on June 23, 2003.

[34] At this meeting, Mr. Willis was again dressed in civilian clothes. A.A. described them as consisting of dark blue trousers, and a light blue shirt. She said she presumed he drove, but did not see his car.

[35] While at her apartment, she said Mr. Willis talked to her about some "options" that he had not mentioned before. He told her that if she did not show up for her departure flight the next day, he would come back to her apartment to see if she was there. After that, he would check her workplace. But he said he would give her a grace period of two weeks before he went to C to look for her.

[36] From there, the discussion progressed to what her life would look like if she did not show up. A.A. said Mr. Willis warned her to be very careful not to get apprehended by police. She said he gave her an example of someone who fled, then subsequently shoplifted and that CBSA had been notified by the police once that arrest was made, which led to the individual's deportation.

[37] The complainant recalled responding "I can do that", Mr. Willis saying "really, what if you get into a relationship with someone who is abusive to you? You won't call the police?" She said to him "I guess I won't". She recalls that she was sitting on the carpeted floor cross-legged, and that he himself was sitting on a chair. The meeting lasted between 45 minutes to an hour, at the end of which he said goodbye and left.

[38] She took the gist of the conversation to mean that Mr. Willis was on her side and that she had his blessing to "go down that road". A.A. further stated that prior to this meeting, she did not really know whether or not she was going to comply with the deportation order and the flight the next day. She said she had even advised her landlord, at the last moment, that she was leaving, but that she really did not know what to do.

[39] Shortly after the meeting, she called her brother's partner, R.D., who was the owner of a different apartment building, one which also was proximate to her place of employment. She asked him if she could move into a vacant unit in that building of which she was aware. A.A. received an affirmative response, and she moved out of that apartment, and into the one in R.D.'s building, that very night. R.D. himself showed up to help her move.

[40] When asked to sketch the timeline that evening, A.A. said that the accused had called her at approximately 5:00 p.m., and, after she invited him over, he arrived maybe 30 minutes later, leaving around 6:30 p.m. She said she called R.D. around 8:00 p.m. when she "decided to go into hiding"

[41] With R.D.'s assistance, she packed up some of her belongings, enough to facilitate her move to her new apartment that evening. A couple of days later, R.D. came back and moved the rest of her things. He used his Toyota Camry vehicle in order to do so.

[42] A.A. said that her "new" apartment was in pretty bad shape. The previous tenant had obviously not taken care of it, and it was not cleaned up. She was depressed and said that she felt like her life was over.

[43] The following day, which was to have been her departure date, she went to work as per usual. She explained "Mr. Willis said he would not look for me at C, so I believed him. I went to work." A.A. said that, to her knowledge, nobody came to her work looking for her. She acknowledged that she was aware that, as of June 24, 2003, she was living in Canada illegally.

[44] She added at this point that Mr. Willis had provided her with some additional advice as to how to get by if she chose to go down this path. So she relied on this advice. She did not get her phone service, cable, water or other utilities in her own name. A.A. was able to continue banking as per usual because she said that the accused had told her that the police and/or CBSA would need a subpoena to get at that.

[45] The Complainant said that Mr. Willis had shared something else with her during his June 23, 2003 visit. This was to the effect that each CBSA officer has a certain number of individuals that they are assigned to apprehend. These individuals were prioritized differently. At the top of the list were those with criminal records considered to be a danger to society. Since she did not fall into that category, A.A. was led to believe that she would be well down that list.

[46] She kept working with her employer, C, until late July 2003. This was because her employer started questioning her about the status of her work permit. This was longer than the two-week window with which she said that Mr. Willis had provided her.

[47] She explained it this way. While continuing to work, A.A. came to realize that the two-week "grace period" with which she had been provided was not long enough, and that she needed more time to get another job. So, in late June or early July 2003, she travelled to Halifax and used a phone at Somerset Place to call Mr. Willis (at his work). Her intent was to ask him not to come to her place of employment. He picked up the phone and when she said "hello", his response was "who is this?". She responded "it's me", and he abruptly said "call me at this number" and hung up. She was given the number of a cell phone.

[48] The next day, A.A. called the accused from a pay phone at her place of employment at approximately 3:34 p.m. It was at that point that she asked him if it was possible that he not come to her place of employment to find her. She heard dishes clinking in the background, and assumed he was at home at the time so did not get into much detail. Once again, they made the decision to meet. It was mutual. She did not think that she had anything to be worried about at this time.

[49] They were unable to meet in accord with those arrangements because had she contacted him and said she needed to reschedule. Her testimony was that he was okay with that, and they made alternative arrangements to meet later that same week on Saturday, at approximately 10:00 a.m., at the same Tim Hortons where they had earlier met.

[50] She said they did meet on this occasion. It was approximately mid-July 2003, about two weeks after she had placed the call from Somerset Place. As at their earlier Tim Horton's meeting, she arrived first and he came in approximately 15 minutes later. The meeting was a short one, lasting perhaps 10 to 15 minutes. Mr. Willis told her he could not stay long because he was working a case whereby some "illegals" had been apprehended trying to sneak into the country in a container. A.A. said she asked him "you mean, illegals like me"? The meeting ended with a request from the accused that she call him back in a couple of hours to see if he was available then.

[51] Once again, she was able to describe Mr. Willis' clothing. She said he was wearing civilian clothes consisting of dark blue trousers and a white shirt. Once again, she said that she did not see his car, but added "I wasn't looking".

[52] She decided to travel to Halifax. While she was waiting by a bus stop, her evidence was that a colleague noticed her and gave her a lift. Upon arrival, she called Mr. Willis from a pay phone several times, and each time was advised that he was unavailable to meet. Finally, she decided to leave him a message and give him her (then) current phone number. It was registered in R.D.'s name. She asked him to call her at that number when he was ready to meet.

[53] A.A. received a call from Mr. Willis around 8:00 p.m. that evening. She told him that she was home, she told him her new address on C Street, her apartment number, and invited him to come over. When he came over, it was then that she noticed his vehicle. She described it as a "Sun Runner Sport", white with streaks of colour on the side. She said she had never seen a car like that before. She let him into her apartment. She had to go the entrance of the building and open the main door in order to do so.

[54] A.A. was living in a building that contained six units. She lived on the ground floor. In order to get to her apartment, one went through the main door and walked downstairs to the basement apartment on the right.

[55] She had two windows in the living room of her apartment, as well as two doors, one which led in and out, and another which led into the furnace/laundry room. Upon entering, to one's immediate right, was a small kitchen. On the wall to the right was a long, rectangular window which looked out onto the street. There was another window in her bedroom over her bed.

[56] By way of furniture, the complainant had a sofa/loveseat, the back of which faced the kitchen. To the left of that was a table with some chairs. There was a TV

in front of the sofa. She said if you sat on that sofa, a person down the street cannot usually see you. By the same token, you have to get up from the chair in order to see the outside street.

[57] A.A. saw Mr. Willis from her living room window which looked out upon the street. He had parked directly on the other side of the street by the curb. He was wearing the same civilian clothes in which he had been attired when they had met earlier that day at the Tim Hortons restaurant.

[58] A.A. went into the living room first, followed by Mr. Willis who sat on the sofa. She sat at the table in a straight-backed chair to his left. Approximately one to two feet separated them. She said that she had deliberately set it up that way, because, despite the fact that he had been helpful, she "didn't want to give him any illusions".

[59] The complainant made her request, asking him if it was possible for him not to come to her place of employment to look for her, because she was definitely going to need more time to get any type of job without a work permit. She also reminded him that he had told her that she would not be a priority for apprehension/deportation.

[60] She said Mr. Willis responded by inviting her to come over onto the sofa with him and "show me how much you want this". A.A. thought this was a strange thing to say, but she came over to the sofa, sat next to him, and repeated her request. She said he was sitting on the right cushion and she was on the left one.

[61] He stuck his arm out and put it behind her head on the headrest and turned to her and kissed her lightly on the lips. This caused her to stiffen, then he kissed her again. He proceeded to take off her shirt, her bra, and kissed her all over including her breasts. He proceeded to take off her pants (she remembered that she was wearing sweatpants with an elastic waist at the time) and tried to put his hand into her underwear. She said at this point she told him to stop because, "I'm having my period". While he did touch her vagina, he stopped when she said this.

[62] Her testimony was that, initially, he had her on her back, but then he lifted her and had her straddling him. She described herself as sitting on top of him with his knees bent on either side of her. He was sitting up. She said her body language was quite mechanical.

[63] She acknowledged that in circumstances like these there is always a chance that something like this might happen, "... but I was in a desperate situation and he had been so nice in the past, I didn't allow myself to think he would do it. The stakes were very high, but I didn't want it to happen."

[64] A.A. added that the whole experience was surreal, and that she had never had a similar experience in her life up to that point. As she put it, "I did enough that I hoped it would be sufficient. I hoped it would meet his need and he would give me what I wanted in return."

[65] After she had told him to stop and put her clothes back on, she said that Mr. Willis told her "I get the feeling you're going to be in Canada for a very long time". She interpreted this to mean that what she had done had worked.

[66] Mr. Willis did not leave right away. She said he stayed maybe another 15 to 25 minutes. He was quite relaxed at this point, and they had a conversation during which he talked about his family, told her his mother had given birth to 13 children, and that he was the baby of the family. He shared that his father had died, when he was five, in an accident. He also told her that he had formerly been in the RCMP, and he also had worked in the prisons. She thought he also might have mentioned that his roommate worked at the Sheriff's Department, but was sure that he mentioned that he lived with a roommate in Cole Harbour, and that he had just gotten out of a nine year relationship with someone. After those revelations, he said "goodbye" and left the apartment.

[67] After a week had gone by, as she was washing dishes one night, she had what was almost a premonitory feeling that she was being watched. It was sometime in July 2003 at approximately 7:00 p.m. She turned quickly, in time to see a person crouched in front of her living room window looking down into her basement apartment. That person walked to the back of the building, then returned and she saw that it was Mr. Willis. He went to the front door and rang the bell and she let him in. In explaining why she did so, A.A. admitted that she did not consider him to be a "nice guy" anymore, but added "my being in Canada was dependent on this person, and I couldn't afford to antagonize him." She also indicated that one of the things he had told her was that he was 36 years old, but she learned later that he was actually in his 40s at the time. She did not say how she came by this knowledge of his real age, or when she acquired the information.

[68] He told her that he had not been around for a week because he had gone to Prince Edward Island. He asked her if she had ever been there and said "we should

go there sometime". He again sat on her sofa and started making sexual advances. He tried to kiss her and pulled her into his arms. This time she said "stop" and he did so, but he gave the impression that he was disappointed and/or dejected. When she said "I hope you're not upset" he responded with "no I'm not, don't worry about it, I'm not a vindictive person." A.A. testified that she felt that she had dodged a bullet once again.

[69] When A.A. returned to work on the Monday following Mr. Willis' second visit to her apartment, her supervisor at C asked her, for the first time, about her work permit. She told her supervisor that it had expired and she was told that she needed a renewed one. Ordinarily, her shift ran from 3:00 – 3:30 p.m. and ended around 11:00 p.m. That day she went home early, however, saying she was not feeling very well. She again contacted Mr. Willis, told him what happened, and he responded "I didn't know they were going to be such sticklers for the rules". She asked for his help, and he said he would come over later in the day.

[70] Upon his arrival that day, it was about 6:00 p.m. He told her there was nothing he could do about what had happened. She suspected that he might have had something to do with it, because otherwise it was a "remarkable coincidence". Once again, in her words, he "tried to put the moves" on A.A. by attempting to take her in his arms and kiss her. Once again she refused and said "no". While he stayed approximately 45 minutes to an hour, she could not recall too many of the details that they discussed, except that he had told her he could not help her. She did add that Mr. Willis did not seem as disappointed as he had been on the previous visit when he left.

[71] That was the last day that she worked at C. Within two to three weeks she was able to get another job as a Nanny. She remained living at the same apartment. Mr. Willis was still coming by there once or twice a week. She said that each time they kept re-enacting the whole "song and dance" whereby he would make advances and she would reject him. She could tell by his demeanor that he was becoming frustrated, and also by the fact that he would take longer to stop after she told him to do so.

[72] A.A. said that usually Mr. Willis came by after his workday was over. Often times, he would just show up at her apartment without calling to alert her before hand. He would just ring the doorbell and she let him in. On one occasion he told her "I don't think you like kissing", after he tried to force his tongue down her throat. She had turned her face away and said, "I hate it when you do that."

[73] Mr. Willis' visits to her apartment continued from July, 2003, until early December 2003. A.A. found him to become more intense, insistent and forceful over time. On one occasion, she recalled him yelling at her loudly saying that she had "played" him, and making chopping motions with his hands at the same time. She said the neighbours probably heard him, he was that loud.

[74] On another occasion he called her in the evening asking if he could watch a TV show called "Canadian Idol" at her apartment, because a performer from his community would be appearing on it. When she told him that she did not really feel like having company that evening, he yelled at her over the phone, using words to the effect that she was "selfish" and considered everything to be "all about you". She spiritedly responded "yes, it is all about me, it's my life that's falling apart". She then hung up. Later that evening she called him back, apologized, and invited him to come over the next day. He accepted that invitation.

[75] She said that when Mr. Willis came over the next day, he explained that the reason that he had become upset was that he was not used to being turned down by women, and thought that she might have been in the apartment with another male. It was sometime in August 2003 when this occurred.

[76] A.A. went on to say that, as time passed, she began to develop almost a "sixth sense", which she described as an intuition based feeling when he was coming over. On such occasions, she said she would turn off the lights, close the curtains and not answer the doorbell if he rang.

[77] Things changed somewhat in early October 2003. The complainant testified that, on that date, Mr. Willis came by early in the morning. She was still in bed as it was her day off. The doorbell rang and she went to the door to let him in. She went back to bed saying that she was essentially "still asleep". The accused followed her into her bedroom and she laid on her bed. He told her that things had to change, that he was supposed to execute the warrant. He was going to hand the file over to a colleague, and said that he could no longer "protect her". When she asked what he intended to tell this other person, his response was "that's none of your business".

[78] She also testified that he gave her another alternative. He said he could take the file and store it in a room where they keep the files of people whom they had been unable to apprehend. Mr. Willis explained that this would drastically reduce the amount of scrutiny her file received, and concluded by saying that it would likely buy her another five years in Canada if he did that.

[79] A.A. said he made it clear what would have to happen in order for her to receive the second option. Their relationship would have to become a sexual one. She alluded to the possibility that he may not have expressly said "sexual relationship", because he sometimes spoke rather cryptically. But it was clear to her that she needed to stop resisting his advances.

[80] This time, when he began to kiss her, A.A. did not resist. The accused removed her shirt, her bra, pajama bottoms and underwear. He kissed her all over including on her genitals, and penetrated her digitally. However, they did not have intercourse on that occasion because he said that he had not brought a condom with him. She was unsure as to how long Mr. Willis stayed on that occasion, and although she did not want to have him do those things to her, she knew that she had to do them in order to protect herself. For his part, Mr. Willis' mood appeared lighter. He had "perked up". He took his leave of her.

[81] The next day he came back with a condom. He did not call her before appearing at her door. This time, Mr. Willis took off her shirt, bra, pants and other clothing. He proceeded to put on his condom, and had intercourse with her. A.A. said that she had "zoned out" or "checked out" in describing the experience.

[82] She initially said that he followed her into the bedroom. When asked why she went there first, she acknowledged that she was not sure who went in first. "The day was a blur, I just know we were on the bed". A.A. said that she was a robotic participant in the sexual act. When it concluded she put her clothes on and went into the living room and watched TV. Eventually the accused came out, told her he was leaving, and left. She described the experience as a "very underwhelming one", adding that "it was almost like I wasn't in my body, I just checked out."

[83] A.A. testified that the routine developed whereby Mr. Willis would come by one to two times per week, and she was no longer resisting him. She was just letting it happen. They would have sex, he would always use a condom, and he would always personally dispose of it by flushing it down the toilet.

[84] When visiting, sometimes the accused would stay at her apartment for two to three hours. However, she recalled one occasion when he slept over, because a group of his acquaintances were playing pickup hockey. He just finished the game, and he tried to wash his hockey jersey in a bucket in the bathroom. She took the jersey from him and threw it in the washing machine. She washed and dried it. A.A. recalled that it was approximately 6:00 – 7:00 p.m. in the evening when he arrived on that occasion, but she could not recall why he stayed over that night.

[85] When asked if they had conversations during these episodes, A.A. described one occasion when, while lying in bed, she said to Mr. Willis "you know this isn't consensual, right"? This elicited a response to the effect of "what do you mean, I was just trying to help you" to which she rejoined, "I didn't need you to have sex with me to help me". That conversation concluded with the accused saying "whatever". She said that it took place in approximately mid-November 2003.

[86] In describing her life at that time, the complainant indicated that she went to work, but that was pretty much it. Every time she left her home she said she was scared that she would be apprehended. The process was one of constant fear for her future. She had become a recluse. Moreover, as a Nanny, she had no friends at her place of employment in whom she could confide. She said she eventually confided in her siblings, F. and V., as to what had occurred, after her involvement with Mr. Willis was over.

[87] This involvement came to an end in early December 2003. A.A. indicated their final meeting had been preceded by a period, mid to late November, during which she had not heard from Mr. Willis. He also did not return any of her calls.

[88] Eventually, he did come over, explaining that he had been in Montréal and that that was why he had not contacted her. He took the occasion to again kiss her breasts and perform oral sex upon her, but, to the complainant, he seemed a bit detached. She thought that he might be losing interest. He got ready to leave, and as he did, Mr. Willis said, with what, in retrospect, seemed to her to have been a parting shot, "all you do is spend your time watching TV". A.A. never saw or heard from him again.

[89] A.A. remained in the same apartment. She went to work every day as a Nanny. She testified that she received her permanent resident status almost 12 years later, in 2015. She went on to explain how that came about.

[90] In early 2014, A.A. testified that she had an altercation with her brother, F.A., at her apartment. She said he kicked in the door, came in, threw her blender and broke it, and did some other damage. She wanted to call the police but was aware of the consequences of doing so. She went to the Halifax Refugee Clinic and asked for (lawyer) Lee Cohen, who had been one of the people to whom she had turned for assistance when she had earlier filed her refugee claim in 2003.

[91] On February 6, 2014, she met with a law student. The person with whom she had expected to meet, Katie Tinker, was ill. She described the domestic violence

with her brother, the relationship with Mr. Willis, and told the student everything. This prompted the student to discuss the matter with Ms. Tinker, who then called her back with the advice that A.A. should file an appeal with CIC on humanitarian and compassionate grounds. A.A. initially did not include the sexual relationship with Mr. Willis in the documents that she filed in support of that appeal.

[92] This led to a meeting with CBSA officials at which she, Ms. Tinker, and Mr. Cohen attended. The upshot of what these officials said to A.A. was that the humanitarian and compassionate appeal would take too long, and they were going to commence the deportation process in any event. At that point, A.A. and her legal advisors became concerned that the officials were not listening to her and they would deport her. As a consequence, she became “fired up” and decided to refer to the sexual relationship with the accused.

[93] Among other things, the complainant said that the CBSA officers did not appear to believe her about her allegations involving Mr. Willis, and asked why she had not reported them to the police. As a result, she decided to do that as well.

[94] On her instruction, Mr. Cohen wrote a letter to the Federal Minister of Public Safety. Concurrently, A.A. went to Halifax Regional Police to provide a statement as to what had happened with Mr. Willis. The deportation process was halted as a result, and that paved the way for her to apply for permanent residency in Canada. In April 2015 she achieved that objective.

[95] The complainant also testified that she has commenced a civil action against both Mr. Willis and his employer, the Federal Crown. In addition to the things that she knew about him (which were discussed in earlier parts of her testimony) she also referenced that he was not circumcised and that his pubic hair was grey. When she was asked on cross-examination whether she would be shocked to learn that he was circumcised, she stated, "I would be, absolutely".

[96] As to the hockey sweater, which she said he had attempted to wash in a bucket at her apartment and which she eventually threw into the washer, she described it as a light silvery blue colour with a number on it, but she could not recall whether the number was on the front or the back. She never saw him wearing the jersey, and did not recall whether a player's name was on it.

(ii) *Guy Lawrence*

[97] Guy Lawrence was the next Crown witness to testify following the complainant. He said that he had been a CBSA Officer since 2000, and that he was still employed there. Technically, it was only around 2003 that the agency was referred to as the CBSA, or the Canada Border Security Agency. Prior to that, it had been known as Citizenship and Immigration Canada, or CIC. However, the duties within his department remained the same.

[98] In 2000, the offices of CIC were located at 1875 Brunswick Street in Halifax. The offices moved to 1741 Brunswick Street around 2002, but he was not entirely sure of the timeframe. Their Inland Enforcement Department, between 2000 and 2003, consisted of three people plus a supervisor. Besides Mr. Lawrence, the accused, Carie Willis, and Joanne Johnson staffed that department. Their supervisor was Mary MacLellan, who, through much of 2003, was battling serious illness and was frequently absent for that reason. Toward the latter part of 2003, Ms. MacLellan retired and Pam Taylor became the supervisor of the department.

[99] Prior to Ms. Taylor taking over the position, if Ms. MacLellan was absent from the office, either Messrs. Lawrence or Willis, or Ms. Johnson would take turns taking the phone calls from lawyers and others who were often in contact with the department and, more particularly, with Ms. MacLellan. They would do this in addition to handling their assigned files.

[100] Mr. Lawrence provided an overview of the duties involved with his position and, by extension, that of Mr. Willis as well. He described it as a responsibility for dealing with inadmissible people in Canada. These could include permanent residents with criminality, students who were working while on a student visa, people whose status had expired (such as a visitor, or student visa) and the like. For example, in the case of a student visa that expired and had not been renewed, Mr. Lawrence's department would be assigned the file, and they would be tasked with the deportation of that individual.

[101] Around 2003, each officer was essentially running his or her own files and, if a question came up or they were uncertain of what to do in a particular situation, they would consult with their supervisor. Since they were chronically short-staffed, they had to prioritize those files for which they were responsible. If, for example, there were students or workers whose visas had expired, and they had another file which involved a person subject to a removal order, the latter would take priority. But at the top of the "urgency list" would be somebody with a criminal record who was considered to be a risk or threat to society.

[102] Mostly, on a day-to-day basis, their work consisted of attempts to locate people. For example, they would use social media, go to universities, residences, prisons, and places of employment that were known to them.

[103] Mr. Lawrence indicated that, at the time, Mr. Willis's job description would have been the same as his, and they both would have had the same workload as Ms. Johnson. Each individual officer was responsible for prioritizing his or her own files and, if they were prioritized improperly, the supervisor might step in and direct them to do so or correct their priorities but, generally, it was the individual officer who policed them. A particular file would be "worked" until the client either had been removed from Canada, or recovered their legal status to remain in Canada.

[104] Each officer spent whatever amount of time was necessary on a file. If someone was inadmissible in the country, the officer would write a report in the file and it would go to their supervisor. She would decide on a "Minister's delegate" (one of the three officers) to make a decision on the report as to whether to issue a deportation order.

[105] Their training requires them to treat inadmissible persons as "clients". This clearly ruled out personal relationships and/or sexual ones. When asked if he had ever met clients outside of the office, Mr. Lawrence responded by saying sometimes, if, for example, he had to go to Yarmouth to meet with an individual, he might make use of the local RCMP office, or another secure local area within which to meet with that individual. He also said that, by way of further example, he would not meet at a Tim Hortons, at other public venue, or at a client's home. They need a controlled area within which to conduct the meeting, among other things, to respect the client's privacy.

[106] If required to travel throughout the Province, officers would use a work vehicle (usually not their own). In 2003, they had one such enforcement vehicle, equipped with a "silent partner", as well as three other vehicles without that feature. The only time that a personal vehicle would be utilized for work purposes would be if authorized by the supervisor. The circumstances in which such a request would be made would occur only if, for example, someone was being removed from Canada who was a low risk, and no other vehicles were available at the time. In such a case, they would get permission from the supervisor (for example, to go to the airport beforehand to confirm a particular scheduled departure) or for whatever other reason they needed to use it. In Mr. Lawrence's view, it would never be appropriate for him to take his personal vehicle to drive to a client home. He added that he is

confident that there is something in the "policy manual" regulating the permitted and non-permissible uses of personal vehicles in the course of their work-related duties.

[107] As to the state of the technology available to CBSA officers in 2003, they had a landline in the office. There were a few cell phones in the office but he, himself, did not have a personal cell phone in 2003. If one was required, they would have to sign them out, and he indicated that he would not consider it appropriate for him to divulge the phone number of the cell phone that he was using at the time.

[108] Mr. Lawrence explained that as soon as a person's status in Canada becomes illegal, an Inland Enforcement Officer becomes involved. The file involving that person would land on either his desk, or that of one of his coworkers. The officer assigned to the file stays with it until that individual leaves the country. They even go to the airport to ensure that the person leaves on his or her assigned departure flight.

[109] He elaborated further as to how he and his colleagues prioritized their files. Someone whose student permit had expired would constitute, in his view, a lower risk than someone who, for example, had committed murder. The object would be to apprehend the person, book the flight, and determine whether an escort on the flight is required. For those individuals who had their own financial resources, they could be permitted to book their own flight and leave on their own.

[110] A "Refugee Claim" is a claim from someone who comes to Canada seeking protection from, or who fears danger if they return to, their native country. If refugee status is refused, the next step would be a PRRA, or "pre-removal risk assessment" whereby the officer assesses and determines the risk from the time the request was made to the time of the assessment. The officer assigned to the case from Inland Enforcement would be responsible to bring the client in to the office for the risk assessment. The individual would have up to 15 days to apply and, after application is made, the PRRA officer would make the decision. He stressed that this process would only apply to somebody who was subject to a pre-existing removal order.

[111] When he learns that a PRRA is necessary, Mr. Lawrence said he would give the applicant an application form and tell them where to send it, along with their submissions, in order that it may be reviewed by a PRRA officer. In 2003, the PRRA offices were located in the same building as Inland Enforcement, but the two departments did not discuss cases. Mr. Lawrence also indicated that he had no influence, as an inland enforcement officer, on the PRRA decision; however,

members of his department would be involved in communicating the actual decision to their clients.

[112] He went on to say that someone subject to a deportation order could obtain information on the PRRA process simply by walking in off the street. Generally speaking, in 2003, he and his colleagues would always try to meet with a client, with another officer present as well. Since 2003, that has become a mandatory practice. At that meeting, they would generally discuss, in addition to the assessment that was being sought, the removal process itself, which would occur in the event that the PRRA was refused.

[113] It would be usual to collect as much information from the client as was available. Information about where the person was living, where they were working, which airport in the country to which they were being returned was best to land at, dates by which certain things would happen, and the like.

[114] Rather than inform a person over the telephone as to whether they had been successful with the PRRA, the practice was to have the client come to the office, where they would be told the result and provided with a letter in confirmation. This was because an individual might become a flight risk if advised over the phone, for example, that their application had been dismissed. "For that reason, we don't give it out over the phone".

[115] When the results were provided, further information would be obtained to determine whether the individual's circumstances had changed since the initial interview, and any other loose ends that needed tying up. The things to be discussed could include whether the person's living arrangements were still the same, whether or not the client had a car, and other things. Often, two weeks would be a usual timeframe within which they would be whether expected to leave the country. This could be extended, for example, in the case of a student, with the end of a school year imminent, or if other pressing reason existed to do so. Extensions would be discussed with their supervisor. Arrangements for departure were made with a travel agent working in Montréal.

[116] Mr. Lawrence testified that, when dealing with one of his clients, he would have the person come in to receive their PRRA results and, if the result was negative, he would discuss a general timeline for removal. If they were a low risk, he might accept their word that they would attend at the airport and get on the flight as required. On occasion, he has driven clients to the airport himself.

[117] He said that, if an individual did not attend for the scheduled departure flight, he would make efforts to locate that person. If the person was a low risk to society, he might do that the next day, but he would definitely make the attempt within 24 hours.

[118] Mr. Lawrence would not go to the person's place of employment right away. First, he would go to their last known place of residence and knock on their door. If no response, he would speak to the landlord and see if the person still lived there or, if no longer residing there, he would try to find out when they had vacated. Then he would check on the person's place of employment, if he was aware of it.

[119] Mr. Lawrence would explore all available leads and, if unsuccessful, would seek a warrant. The timeline within which to initiate the warrant process would be, at most, within one to two weeks, but, in his view, the quicker the better. In fact, often he would complete the paperwork for the warrant as soon as he got back to his office, so that it was "ready to go" immediately after he had checked the place of residence and employment of the individual, and other available leads (if any).

[120] He testified that the idea is to report that the individual was at large, and get that information in the hands of the law enforcement authorities in Canada and the United States, so that if they come across the individual, the person may be apprehended.

[121] Mr. Lawrence went on to say that, once prepared, the warrant paperwork gets sent to their Ottawa office. If there is a mistake in the paperwork, it gets sent back. In Mr. Lawrence's view, a period of five to six months between an airport no-show and the issuance of a warrant is not normal practice.

[122] There was some oversight provided to ensure that the process functioned properly. In the fall of 2003, it would be the supervisor's responsibility to invigorate the process and get it going if it was languishing or progressing too slowly.

[123] A supervisor might know about a problem if the officer were to advise of a particular difficulty. Alternatively, since theirs was a small unit, the supervisor would generally find out anyway, since she was usually well-versed with respect to outstanding files.

[124] With that said, the system was imperfect; there were lots of files. When all leads had been exhausted, the file would go back to the central registry in a back room with a bring forward or "BF" date, so that it could be periodically brought back

to the responsible officer's attention and reviewed. Files were never closed while the individual in question was still illegally at large. Notes would be kept in the file as to the work done by the officer, including social media checks.

[125] From June – December 2003, Mr. Lawrence testified that Mr. Willis, to his recollection, always came to work. He identified Mr. Willis in court, and said that the accused looks pretty much the same now as he did in 2003. He went on to add that Mr. Willis always dressed professionally, and he knew, through discussions with the accused, that prior to working at CBSA, he had worked with community policing, sheriff services, and maybe at a prison in Nova Scotia.

[126] Socially, he confirmed that his department had a hockey team, and that Mr. Willis played on this team. As for motor vehicles, he recalled the accused having an "older truck", and also a Chevy van in or around 2002 – 2003. The colour of the van was "two-tone" grey.

[127] Mr. Lawrence recalled that Mr. Willis had joined their department in around 2001, and described his former colleague's work ethic as good, and said that he was "very professional" with his clients. He said that Mr. Willis sometimes struggled with paperwork, but that this was not uncommon with a new officer, adding that it often takes one to two years to become comfortable with all of the aspects of the job. He went on to say that they all (even senior members of the department) sometimes encountered difficulties with paperwork, to some degree. At times, the supervisor and/or other officers would help out in this regard. He felt that he and Mr. Willis had a good working relationship and that, if the latter had any questions, he was always there to help him out.

[128] Mr. Lawrence had no independent recollection of A.A.'s case. He knows that he accompanied Mr. Willis to the airport on the date of her scheduled departure date (June 24, 2003) because his notes are in the file. He (likewise) had no recollection of visiting A.A.'s one-time employer, C, on October 27, 2003, but deferred to the file notes which make reference to his having done so.

[129] As to a client's employment, sometimes they learn the names of employers through anonymous tips. Generally, anonymous tips received by the department are provided to the supervisor, who would then make the officer in charge of the file aware so that it could be checked out.

[130] Mr. Lawrence was asked about the protocol, or the then extant policies (in 2003) governing what type of flight a deportee would be put on. For example, if

criminals were on the same intended flight to a particular country, he explained that the decision would generally be left to the travel agency. Odds were that any criminals on the flight would have officers accompanying them but, if the travel agency had any concerns, they would advise the officer seeking the departure flight. In certain cases, it would be quite safe to put a young woman with no criminal past on the same flight as criminal deportees, if the latter were being accompanied by escort officers.

[131] He confirmed that the governing legislation and regulations passed pursuant to that legislation did change in 2003, but he could not recall what the manual (in 2003) said about notebooks. While he indicated that there might have been some people in Inland Enforcement using notebooks in 2003, he could not recall if Mr. Willis was one of them. He said when CIC became CBSA, the use of notebooks became mandatory. The employer provided them and they were the property of the federal government. When the notebooks became filled up, they were given to a person in the office and, after certain amount of time had passed, they would dispose of the notebooks. Until then, the employer kept them.

[132] For most of 2003, Mr. Lawrence indicated that he did not use a notebook but, rather, wrote notes and put them in the file. However, he did use a notebook after the latter part of 2003, when CIC became CBSA. He did not use a clipboard to make notes at work. If he had been out in the field, he would make notes and, when he got back to his desk they would be added to the file. The notable exception was when he was at the airport, as he was able to make notes there due to CBSA having an office at that location.

[133] Similarly, he confirmed (on cross-examination) that, in 2003 he did not have a personal cell phone, and he was unaware whether or not Mr. Willis did.

[134] He also confirmed on cross-examination that it is typical to ask the client about personal relationships. For example, if the CBSA officer knows that they may be living with or in a relationship with someone, they have an extra source with which to check in the event that the person becomes a flight risk or a no-show. He confirmed that he did not know that A.A.'s warrant remained unexecuted until December 8, 2003, and, in fact, it was not until he was interviewed in or around 2015 by Det./Cst. Sharpe, that he became aware of all of this. He was similarly unaware of any review done by the office internally after A.A.'s warrant was delayed until December 2003, and was also unaware of any concerns voiced by anyone in their Ottawa office when the warrant application was received in early December 2003.

[135] Mr. Lawrence could not recall how many instances of "no shows" for deportation occurred during the calendar year 2003. He said they did happen, but there appeared to be no particular pattern to them. Some months they may have none; some months they might have three or four.

[136] He said the first thing that would happen when a "no-show" occurs at the airport, is that the supervisor would be notified. It would be the supervisor's job to follow up with the officer who was responsible for the file, and conceded that that would be the case with Mr. Willis, in particular, since he was relatively new to the job. Mr. Lawrence added that he was personally unaware as to whether the supervisor had followed up with Mr. Willis between June 24, 2003 and December 2003, but it should have been done. He added that "supervisors like Mary MacLellan have a lot of experience in Inland Enforcement" and said that she would be well-versed with respect to proper warrant procedure. On the other hand, she was quite ill during 2003, and Mr. Lawrence recalled periods of time where she was off for a couple of days per week, in which case Mr. Willis might be bereft of her assistance or guidance

[137] Mr. Lawrence also recollected a time when Mr. Willis was subjected to a workplace investigation "somewhere around 2004 – 2005". Once this started, he was not allowed into their office for a number of months. It involved an allegation that he was using a government vehicle for personal use and charging mileage back to the employer. During that interval, CBSA staff came and took Mr. Willis's files off his desk. The witness was unsure as to what became of them. The investigation, which occurred under the auspices of a new supervisor, Pam Taylor, occurred as a result of a report made by Joanne Johnson, one of the accused's colleagues in his department.

[138] A protracted investigation ensued after which the allegations against Mr. Willis were ultimately deemed to have been unfounded. The report referenced certain recommendations in terms of additional training that the investigators felt should be made available to Mr. Willis. Moreover, the witness was uncertain of, or unaware of, whether any training had been provided to Mr. Willis prior to his assuming the position in 2001. He said the norm would be for the supervisor to train a new officer, and decide whether he needed further training from time to time. Often this training is provided by seminars prepared in Ottawa that they would access from their own desks.

[139] As for Mr. Willis, himself, during the investigation he worked for a period of time at another location. He returned to work with Mr. Lawrence and the rest of his former colleagues, from approximately 2006 to 2007, and then applied to work in a training unit for CBSA officers in Montréal. He used Mr. Lawrence as a reference for the position, and was successful in obtaining it. He continued to work in that capacity until arrested and charged in this matter, under circumstances that will be discussed further in these reasons.

(iii) *Agreed Statement of Facts*

[140] The parties entered an Agreed Statement of Facts into evidence. It concerned the CBSA internal affairs investigation of the accused which occurred between July 2005 and December 2006. This was marked as Exhibit “18”. It reads as follows:

1. From July 2005 to December 2006, CBSA Internal Affairs conducted an investigation (hereafter the “Investigation”) involving the examination of some of Mr. Willis’s files, and a report (hereafter the “Report”) was prepared;
2. For the purposes of these proceedings, Crown and Defence counsel have agreed upon the following facts concerning the Investigation and Report;
3. The basis for the Investigation was issues raised by Mr. Willis’ supervisor, Pam Taylor, and the purpose of the Report is summarized as follows:
 - a. [T]he Internal Affairs investigation report into an allegation that Officer Carie Willis, Inland Enforcement Officer, CBSA, Halifax, N.S., may be using the government vehicle for personal use, altering the log book to distance himself from this practice, operating a second personal business during government working hours, and that he may be making fraudulent entries in his assigned working files to disguise the fact that he is not performing his regular assigned duties.
4. As part of this process, Klaudios Mustakas (job title: CBSA Manager Enforcement Operations) was appointed as subject matter expert with respect to *Immigration and Refugee Protection Act*, tasked with examining the allegations made about Mr. Willis (as noted in “3.a.” above);

5. Mr. Mustakas conducted a detailed examination of 15 cases, that were identified by a CBSA Audit Team (as a result of the Team's examination of 118 cases);
6. The Report does not specify or identify the names; dates or type of files examined.
7. Mr. Willis was interviewed by Mr. Mustakas for the purposes of the Investigation and Report in July 2006. During the interview Mr. Willis indicated;
 - a. he had made several requests on paper for training that he felt he needed during previous evaluations (unrelated to the Investigation), including data base training;
 - b. he received part 1 of Enforcement Training but not part 2 nor did he receive Removal Training
 - c. other individuals in his unit received part 2 Enforcement, Removal and National Case Management System (NCMS) Training;
 - d. he was required to meet with his supervisor Pan [sic] Taylor and Director Bob Moore on 2 or 3 occasions previously (unrelated to the Investigation) about concerns the superiors had with his files;
 - i. he expressed that he felt the concerns in question arose as the result of not receiving necessary training;
 - e. he identified that his issues began when Pam Taylor became Supervisor of the unit. Pam Taylor's supervisory style impacted upon him personally and his problems were with her.
 - f. he stated he loved working under the direction of and being part of Mary McLellan's team. His problems started when Pam Taylor came into the supervisory position as she had a different approach. Pam Taylor did not trust him and did not trust her.
 - g. It became evident during the interview that Mr. Willis and his supervisor, Pam Taylor had a personality conflict. Willis blamed many shortcomings in a number of his files on his lack of training and lack of proper supervision by Pam Taylor.

- h. he indicated that in June 2006, he was transferred from the Enforcement Unit to the Halifax Airport, on a permanent basis.
 - i. he expressed that he felt that if he had been provided with necessary training, he would still be working in the Enforcement Unit, and would not have been transferred.
 8. Following the interview of Mr. Willis, Mr. Mustakas prepared a report (hereinafter the “Mustakas Report”), which was subsequently incorporated into the full Report. The Mustakas Report included the following comments:
 - a. Upon evaluation of the cases initially identified for further review by the Audit Team, it became evident that Officer Willis had an extensive workload (over 60 cases);
 - i. Other officers’ caseloads were not confirmed;
 - b. Without exception, the 13 cases (two case did not merit any further analysis) involved many gaps;
 - c. The cases reviewed had a similar theme in that they were not handled in a timely fashion. Two cases clearly require some further action in order to conclude them.
 - d. the following courses were taken by Mr. Willis:
 - i. IRPA Computer based training for inland officers and agents
 - ii. IRPA Computer based training for POE Officers
 - iii. IRPA Computer based training for enforcement officers
 - iv. Canadian Police Information Centre (CPIC) training
 - v. Enhanced C&I Officer Training
 - vi. OMS Training
 - vii. IR.PA Refresher training
 - viii. Certification as a PPCT instructor
 - ix. 2 day Investigators seminar
 - x. Instructors Certificate for GAGE (ground avoidance and escape)
 - xi. SHARP (sexual harassment and rape)

- e. the following were identified as the “ideal courses to be taken by an Enforcement Officer”:
 - i. Basis Immigration Officer Training (BIOT)
 - ii. Canadian Police Information Centre (CPIC)
 - iii. Working with FOSS
 - iv. PPCT 5 days
 - v. Immigration Investigations
 - vi. Immigration Removals
 - vii. Immigration Escorts
 - viii. Enhanced Citizenship and Immigration
 - ix. Diversity and respectful workplace training

9. Mr. Mustakas concludes the Mustakas Report by noting:

- a. Mr. Mustaka was mandated to determine whether any of the files in which Officer Willis was involved with, and subject to the audit, had any elements of malfeasance. After reviewing the files in question and based on the interview with Officer Willis it is the conclusion that no malfeasance has occurred. It is however the opinion of the committee that Officer Willis needs further training in time management and organization with respect to his file management. If Officer Willis is to continue to be an Enforcement Officer then every attempt should be made to have him receive the Basic Immigration Officer Training (5 days), Immigration Investigation Training (10 days), Immigration Removals and Escort Training (3 and 2 days respectively).

10. The Report concludes by noting:

- a. The Information gathered during this investigation determined that the allegation that Officer Willis may be making fraudulent entries in his assigned working files to disguise the fact that he is not performing his regular assigned duties is refuted.

(iv) *Catherine Tinker*

[141] Catherine Tinker was the next Crown witness. In 2014, she was working with the Halifax Refugee Clinic as a Research Assistant. This was a "not-for-profit" entity consisting of a Board of Directors, an Executive Director, four to five full-time staff members, and a few articling students. They provided no cost legal and settlement services for people making refugee claims, and some others that had humanitarian issues.

[142] People with humanitarian issues would be those reporting concerns of danger should they return to their country of origin. People making such a claim would need to fill out certain forms and include supporting documentation and facts. Ordinarily, the name, address, work history, and family members, together with biographical information and the humanitarian-based reasons would be basic information that would have to be provided.

[143] Also included with such an application would be letters of support from Canadian residents. The Applicant would be expected to show some degree of current establishment in Canada, some degree of participation in society, and the like. There is also some degree of inherent risk to an applicant in invoking the process. A person who is living in the country illegally, without status, would be "on the radar" of the CBSA, who would be notified of their location by virtue of the application.

[144] With respect to A.A. personally, Ms. Tinker recalled first meeting with her in early 2014 (perhaps February). A.A. had reached out and contacted their clinic which was, at that time, located at 5538 Macara Street in Halifax. As Ms. Tinker recalled it, "I had not worked with many people who'd been illegally in Canada for so long as A.A., but it does happen". She recalled discussing with A.A. the latter's desire to regulate her status in Canada, because being without status was a difficult situation. A.A. faced difficulties trying to live her life with the spectre of deportation hanging over her head, trying to obtain and maintain employment, and all the while not having any societal benefits such as health care.

[145] Their legal counsel, Lee Cohen, also eventually became involved in A.A.'s case, but it was A.A. who made the decision to exclude the information about the actions of the accused when she submitted her application in August, 2014. She did so after discussing the matter and receiving legal advice. As Ms. Tinker explained it, "We felt her application was a strong one even without it. She'd been in Canada for a long time and had good letters of support." By the time the application was

submitted, there had been maybe two or three meetings with A.A., Mr. Cohen, and Ms. Tinker being present. Each meeting was approximately one hour in length.

[146] After being notified of her application, CBSA wanted to meet with A.A. Initially, Ms. Tinker said that they were unaware of what CBSA's intentions were; however, during the course of that meeting with them, and after gauging their reaction to A.A.'s application, the decision was made to disclose the allegation against Mr. Willis. A.A. did so after discussing the implications with Mr. Cohen.

[147] Afterward, Mr. Cohen wrote a letter disclosing the allegations to the Federal Minister of Public Safety, and A.A. reported the allegations to the police. Ms. Tinker accompanied her during her first meeting at HRM police headquarters on Gottingen Street in Halifax. She was unsure if A.A.'s interview was recorded in any manner. Ms. Tinker herself was also interviewed by police, at Mr. Cohen's office, and she thought this one might have been audio recorded.

(v) *F.A.*

[148] F.A. (A.A.'s brother) also testified. He has been a permanent resident in Canada since 2001, but he had come over with A.A. and their sister V. in 1996, all on student visas, to study at Dalhousie University. The three lived together for a few years after arrival, however, A.A. left in around 2000 to live on her own. She first lived on Q Street in Halifax and then moved, he thought, in the summer of 2002, to F Street.

[149] F.A. helped her with her resume when she applied for her position at (employer) C. He was also aware that she had applied for refugee status around that time, and had not been accepted. In fact, she consulted with the same lawyer who had helped him obtain his permanent resident status a year earlier.

[150] Her situation changed rather fundamentally in 2003. A.A. told him that she "got lucky" that year with the Immigration Officer who was in charge of her case. Next, she told him that she had been asked by her employer ("C") to provide more "long-term papers". At that time, she left C and moved from F. Street to C. Street, into a building owned by his partner R.D. In fact, A.A. still lives there.

[151] F.A. disagreed with the timeline as to when he found out that A.A. and the accused had been having sex. He said the revelation came while he was still working at "C" along with A.A. He said he worked at "C" during 2003, so she did not reveal it to him in 2004.

v. *The earlier voir dire evidence*

[152] Earlier, prior to the Crown's commencement of this trial, a *voir dire* was held to determine the admissibility of a statement provided by the accused to Detective Constable Donald Buell (“Det./Cst. Buell”) of Halifax Regional Police. Following this, I concluded that the statement by Mr. Willis had been the product of an operating mind and ruled that it could be used as a cross-examination aid should Mr. Willis choose to testify. My reasons were delivered orally prior to the commencement of the trial.

[153] The exhibits shown to Mr. Willis by Det./Cst. Buell during the course of the police interview were also entered as exhibits in the trial proper. Also, all of the *viva voce* evidence provided by witnesses Detective Constable Jason Shannon, Constable Andrew Beaton, Det./Cst. Buell, Detective Constable Shelley Mews, Special Constable Amanda Rodgers, and Special Constable James Strum at the *voir dire* was admitted as evidence in the trial proper. Finally, I will mention, that Mr. Willis also tendered the medical evidence that he had called during the *voir dire*, from forensic and general psychiatrist, Dr. Toguri, as well as Dr. Toguri's report dated August 26, 2021. It will not be necessary to refer further to the evidence of Dr. Toguri in these reasons.

[154] A concise summary of the pertinent evidence offered by the Crown “*voir dire*” witnesses begins with that of Det./Cst. Shannon (“Shannon”). He testified that he was made aware by the Sexual Assault Investigative Team working this case (approximately in March 2016) of the warrant for Mr. Willis's arrest. He was told that Mr. Willis worked for CBSA, and was provided with both his home and work addresses in Quebec.

[155] Shannon contacted a colleague in Montréal, and provided both addresses. He testified that he requested that Mr. Willis be arrested at home, rather than at work, as a professional courtesy. After the accused was arrested, Shannon and colleague, Det./Cst. Brad Jardine, flew to Montréal on March 31, 2016 and returned the next day with Mr. Willis. The accused was arrested, “chartered” and cautioned by Jardine, and indicated that his preference was to speak to a lawyer upon arrival in Halifax. Shannon and Jardine travelled in plain clothes, unarmed. Mr. Willis was polite and respectful at all times during the process.

[156] Upon their arrival in Halifax, around 4:45 p.m., Shannon described the accused as fine “physically”. He was taken to the police station headquarters' interview room (upstairs). The investigators were waiting for them, Shannon

removed the accused's body belt and concluded his involvement. He said that, by this point, Mr. Willis appeared to be frustrated, but he did not give anybody a hard time. Neither he nor Jardine had had to raise their voices with Mr. Willis, nor did they discuss the charges with him. There were no threats nor promises made. This was the last contact that he had with Mr. Willis

[157] Cst. Andrew Beaton testified to the fact that he had been the driver of the patrol wagon which brought Mr. Willis to Dartmouth Provincial Court in relation to these charges on April 2, 2016. He had been transported from Halifax Regional Police Headquarters' Personal Care Facility.

[158] Det./Cst. Buell testified that on April 1, 2016, he was approached by Sgt. Stephanie Carlyle and asked to assist with an interview regarding a historical sexual assault. He thought the name "Carie Willis" was familiar, and, when he met the accused, he recognized him as someone that he had known and worked with when the latter was employed by Sheriff services (and also from an earlier time when Mr. Willis had been an RCMP auxiliary). By this point in his career, Det./Cst. Buell said that he had conducted at least a thousand interviews.

[159] The Court watched the lengthy videotaped interview involving Det./Cst. Buell and Mr. Willis in its entirety. The former said that his objective during the course of the interview was to determine the truth, and opined that most people do tell the truth, but some do not tell the complete truth.

[160] Det./Cst. Buell was asked on cross if he had considered showing a picture of the complainant to the accused after the latter had indicated that he did not recollect the name "A.A". He responded in the negative, but said that if Mr. Willis had done what was alleged, "I'm sure he'd remember it, especially if he's a law enforcement officer." He did add, however, that it is currently his practice to show a photograph of the complainant to the accused when investigating sexual assault cases. I will return to further discuss aspects of this interview further on.

[161] Det./Cst. Shelley Mews ("Mews") became involved in monitoring the Buell/Willis interview upon the request of Sgt. Drummond. She described the monitor's role as one which required her to make electronically typed notes to ensure the continuity and safety of the person in custody, and also to look for signs of whether or not the interviewee appears to have an "operating mind" during the process. She sat in a separate room while observing and listening to the entire interview take place.

[162] Special Constable Amanda Rodgers testified that on April 1, 2016, when she met Mr. Willis, she had only been a Special Constable for a few months. She would have been working out of the police headquarters building in cell block and booking. She said that her job involved the photographing and fingerprinting of accused persons. She testified that, although on duty that date, she did not believe that she was involved in inputting the information with respect to the accused, nor did she remember him.

[163] When she fingerprinted and photographed an accused, the information taken and prepared by her would be transferred from Versadex to the fingerprint program. She explained that normally the fingerprinting was done before the photographs were taken. If any other distinguishing features, such as tattoos or birthmarks, were visible, she would make a note of them as well. She would not make note of eye shape, but would make note of eye and hair colour, and if there were some other characteristics such as a limp displayed by the subject, she makes out note of that too. She also said that there was an entry slot to use when the accused has no hair – a "bald category".

[164] Special Constable Rodgers' colleague, Special Constable James Strum, was also on duty the evening of April 1, 2016. As of that date, he had been a Special Constable for almost eight years. He was working the dayshift, which involved 6:00 a.m. to 6:00 p.m. He did not specifically recollect Mr. Willis, but could confirm, from the entries made in the file, that he did "book" the accused. Health forms would be filled out by him on the basis of answers received from an accused person, so as to provide a record of basic medical information in case there were any medical issues that arise while the person is in custody.

[165] Strum said the template that he uses is the same for every prisoner. The only blanks in the form would occur if the prisoner refused to answer.

B. Defence Evidence

vi) Dr. Niall Joseph Buckley

[166] Dr. Buckley's testimony was proffered in response to A.A.'s evidence that Mr. Willis is uncircumcised. His area of practice is family medicine, and he was licensed to practice in Newfoundland and Labrador in 1981. He moved to Nova Scotia in 1983, and has continued to practice family medicine in this Province since that time. In the course of his practice, he testified that he regularly deals with people who

were circumcised as children and some who had the procedure performed as adults. He was qualified to provide opinion evidence in the field of family medicine.

[167] Dr. Buckley testified that the accused was interviewed and examined by him on September 10, 2022, and that he prepared a report with photographs two days later. He had been advised that Mr. Willis was facing charges associated with sexual activity in 2003, and had been arrested in early April 2016.

[168] Dr. Buckley testified that Mr. Willis is a circumcised male. The operation had been performed very cleanly, and it had obviously been performed in a professional setting such as a clinic or hospital. He testified that it is nearly impossible to pinpoint an exact time when the operation was performed, but he could say that it had not been performed recently because of the degree of healing at the site. His opinion was that it was much more likely than not that the circumcision predated 2016, and could possibly have been done shortly after Mr. Willis's birth. On cross-examination he said that the circumcision almost certainly predated 2016, but it was also possible that it had been performed after 2003.

[169] He also examined Mr. Willis' body to discern and document any birthmarks, tattoos, scars, or other notable features. He made note of, and photographed, a tattoo consisting of circles in the middle of Mr. Willis's right bicep, approximately two inches from top to bottom, a healed scar in Mr. Willis's left groin area (apparently from inguinal hernia repair), and a straight vertical incision resulting from prostate surgery that appeared to have been done prior to 2008.

(vii) Amelda Willis

[170] Amelda Willis is the accused's wife. They were married in 1990, and in fact have known each other since they were 17 years of age. She lives with her husband and family in Québec, and they have five children, aged 38, 30, 25, 18, and 16 years. She said that in 2003 the family was living in the community of North Preston, Nova Scotia. They had three children at that time, and their ages were 19, 11, and 6 years respectively. Their eldest daughter was attending Mount Saint Vincent University that year.

[171] When asked to describe her health in 2003, Ms. Willis testified that she was then pregnant with their fourth child and was experiencing some health complications as a result. She was generally sick to her stomach, often vomiting, and she was required to take some time off from her employment. She recalls spending most of her days laying on the sofa. She required help to get her housework done.

[172] Their daughter received a morning drive from North Preston to Mount Saint Vincent University each weekday during the school year. The transportation was provided by Ms. Willis' sister, who had to drive daily in that direction to attend her own place of employment. Their daughter is hearing-impaired, and, as a consequence, she did not take the bus, nor did she have her own driver's license.

[173] In order to get her housework done, Ms. Willis received help from her mother and sister, and also from her daughter and Mr. Willis himself.

[174] She testified that Mr. Willis was generally gone, on a typical day, from 6:00 to 6:00 daily. His practice was to pick up their daughter from Mount Saint Vincent University, and the two would usually be home before 6:00 p.m. Mr. Willis and their daughter often made dinner, and then assumed responsibility for getting the younger children's lunches ready for school the next day, and getting them off to bed.

[175] Amelda Willis characterized her husband's regular work schedule, originally, as one whereby he was always on call. However, after she became ill, he mostly worked 8:00 a.m. to 4:00 p.m. and did not receive any more "on-call" work. His routine became more standardized so that he could regularly pick up their daughter after her classes concluded, and get home in time to help her with the housework.

[176] Ms. Willis said that she was usually sickest in the morning, and that her mother and another of her sisters (who lived nearby) generally came over, after Mr. Willis went to work, to help her out. She described her own household role as "not a big one" at the time. When evening came, she was usually able to do some light housework. She was aware that her husband was under a significant amount of pressure at work, as he would often discuss his heavy caseload with her, and they would often talk about his struggles, and also those of his coworkers, as they tried to cope with the amount of work.

[177] She testified that she could not recall a single occasion when Mr. Willis either travelled outside the province in 2003 (certainly not to Prince Edward Island) or when he was even away overnight. He would have been missed. She described her relationship with Mr. Willis as a very good one, and said that he is, and always has been, a "good family man".

[178] Ms. Willis testified that Mr. Willis had a scar on his right wrist from a cut that he had sustained there, and a birthmark on the right side of his thigh. In 2003 she did agree that Mr. Willis played hockey, in fact he and his brother participated on a team that usually played at 4:00 p.m. on Sundays at Cole Harbour Place. His team was

called the "Mighty Ducks", and their jerseys were distinctive, and just like the ones worn by the NHL team from Anaheim.

[179] That year, before she was required to stop work due to her pregnancy, she testified that her husband purchased a Suzuki Sidekick motor vehicle for her. It was a "soft top", in other words, you could take the rooftop off if you wished, on sunny days. It was a white vehicle, with turquoise and black stripes down the side. There was also a big spare tire on the back, easily visible to anyone seeing that vehicle. The family subsequently acquired a blue van, also in 2003.

[180] She testified that she met the accused when they were 17 years old. He was circumcised then. She confirmed Dr. Buckley's testimony that he also had scars on his stomach from hernia and prostate procedures, and a tattoo on his arm. Ms. Willis also testified that she and her husband had been separated for approximately two years, between 2006 and 2008.

[181] On cross-examination, Ms. Willis confirmed that between April and September 2003 there would have been no university classes for their daughter to attend, so her husband would not have been picking her up after work during that interval.

[182] While Mr. Willis was at work, his wife acknowledged that she would not necessarily know where he was on a day-to-day basis, and that, while she was sure that he had a landline telephone at work, she was uncertain as to whether he had his own personal cell phone in 2003. She could not remember any individual phone numbers. But she was adamant that there was no on-call work or overtime in 2003, and she reiterated "I was extremely sick and he had to be home" when his workday was over. She was reminded on cross that she had a 19-year-old daughter as well, and responded to the effect that their daughter helped out quite a bit too, but they did not want to put all of this burden on to her because she was 19 and had a life of her own.

[183] The only social outlet that Mr. Willis had in 2003, that his wife could recall, was the hockey league that he played in, and he played on Sundays. She allowed that he also may have played recreational baseball from time to time that year in the summer, but she could not remember him specifically doing so. She had no independent recollection of him playing for another hockey team representing the "immigration department". Her pregnancy ended when she gave birth to their fourth child, a boy, in early January 2004.

[184] Ms. Willis acknowledged that she was aware that the charges being faced by her husband were very serious ones, and it would be a real blow to her, Mr. Willis, and everyone who knew them, if he were to be convicted. In addition to the personal angst that the family would endure, her husband would lose his job and his pension.

[185] Finally, on redirect, Ms. Willis confirmed that their daughter had a job outside of the home during the summer months of 2003, at a local Tim Hortons, and her aunt took her to work each day. She received a ride home with a friend at the end of each shift. She could not recall specifically when, in September, 2003, her daughter resumed her studies at Mount Saint Vincent University.

(viii) Carie Willis

[186] Mr. Willis, at the time of his testimony, was 62 years old. He resides in Pointe-Claire, Québec, with his wife. He confirmed the names and ages of his five children, earlier provided by his wife during her testimony.

[187] His evidence was that he was born in North Preston, Nova Scotia, the youngest of 11 children. Also living in his household were his niece and nephew. He evidenced none of the difficulties that he had experienced in his interview with Det./Cst. Buell in recollecting schools that he attended or the places where he had worked, chronologically. I will also return to this point later in these reasons.

[188] He graduated from Graham Creighton High School in 1979, and after high school, during the years 1985 – 1986, he took commerce courses at Saint Mary's University, after which he moved to Dalhousie University and took a Communication Program for aspiring police personnel. After that, in 2001-2002 he took a Corrections Course from Success College, as he was interested in obtaining a job as a Federal Corrections Officer.

[189] Interspersed with his education were several periods of employment. He stated that he worked for the Sheriff's department, and although not certain what his date of commencement had been, he recollected that he completed his employment there in 1997 or 1998. He had also worked as a Security Officer at Dalhousie University, and had gone to RCMP Academy in Regina, Saskatchewan to take a one-month course with respect to becoming a "Community Constable".

[190] In 2002, he obtained a job with CIC, an entity which amalgamated with CBSA the following year. His title was that of "Inland Enforcement Officer" and, at the time, their offices were located on Brunswick Street in Halifax. He remained at that

location until 2005, when advised by his employers that he was under investigation, and was escorted out. He had received no job specific training prior to his hiring at CIC. He quickly met his coworkers, supervisor Mary MacLellan, and colleagues Guy Lawrence and Joanne Johnson.

[191] On-the-job training was supposed to be divided into two parts. He received part one, which consisted of a two-day course which (he thought) he took in Winnipeg, Manitoba. This included exposure to CPIC, as well as some computer training. Mr. Lawrence also showed him how to access programs on the computer such as FOSS. There was also some practical, hands-on experience that he obtained by following Mr. Lawrence around for a period of time, in order to see how things were done.

[192] He said his duties were to enforce the *Immigration Act*, and if a person were to contravene that *Act* by virtue of criminality, he would have to deal with it. He also did removals, escorts, confirmation of departures, and he had the power to arrest a person with or without a warrant provided he complied with the legislation in so doing.

[193] Mr. Willis said that when he first started, in 2002, there were two types of shifts that he might be required to work. Both were Monday to Friday, but one shift was from 7:00 a.m. to 3:00 p.m., and the other was from 8:00 a.m. to 4:00 p.m.. They were also continually on-call. He recollected that it was a very busy time. In 2003, because of his wife's medical condition brought on by her pregnancy, he was relieved of the need to be on call.

[194] In 2005, when under investigation, he went to work out of offices in Purdy's Wharf, Halifax, doing computer systems work. In total, he was absent from inland enforcement for approximately a year. He returned to the Brunswick Street office in 2006 but he did not resume work on the same files. He was given other files to work on.

[195] He said that Inland Enforcement officers interview and locate clients, attend to removals, and often have to go on road trips to locate individuals. They were responsible for all of Nova Scotia, and often went to different parts of the Province. Each officer had hundreds of files at any given time, and one did the best one could to try to get as much work done on those files as possible. They all wore plain clothes, and were unarmed. He himself generally wore dress pants and a shirt, khakis sometimes. He said that some of his colleagues were more casual than he, but there was not really a formal dress code.

[196] As for record-keeping, Mr. Willis said that generally his practice was to take a notebook wherever he went, and that he inserted information into it to act as a memory aid. At times, if he was in the office, he would sometimes use sticky notes. Either way, whether via notebook or notes inscribed in some other manner, he would next do up a synopsis for entry into the particular file to which it pertained. The idea was to provide a file record of what had happened, in chronological fashion. These were what were called "case highlights". The notebook itself was the property of CIC, it had the words "Immigration Canada" on the cover, and lined writing paper in the interior. His practice was to keep his notebook at his desk, and to take it with him when leaving the office to go out on assignment.

[197] Mr. Willis described his work area on Brunswick Street as consisting of three cubicles in a row. His colleagues Joanne Johnson and Guy Lawrence were in the first two and he was in the third. A four foot high divider separated them. On a typical day, the three of them would often get together informally for about a half hour, at the start of the shift, and talk about their ongoing files, particularly the more pressing ones. They might sometimes toss around some ideas on how to handle a problematic situation which one or the other of them was encountering. Often, their supervisor could call a meeting as well, but those would be more formal.

[198] He described his working relationship with Guy Lawrence and Mary MacLellan as "good", but not so much with Joanne Johnson. He said the latter was the one who ended up providing the information to their new supervisor, Pam Taylor, in 2005, which prompted his suspension and the investigation into his actions which the department conducted.

[199] A typical day consisted of looking at as many of his files as he could get to, determining the entries that needed to be made to update those files, and the type of contact with the particular client that was required. If someone needed to be arrested, that exercise would generally involve two officers. Between the years 2002 – 2005, his department had two vehicles, one was designed like a police vehicle with a cage in the back, and it was mainly used if they were arresting someone. The second was a van which could be used if the objective was a less serious one.

[200] When Mr. Willis first began his employment in 2002, he was unaware of his supervisor's medical condition. Initially, she engaged a lot with the unit, however, when she was diagnosed with a serious illness, she began taking time off. He described his relationship with Ms. Maclellan as excellent. She gave the impression

that she was a supervisor who trusted the professionalism of her officers, and she gave them latitude to do their jobs.

[201] The accused said that, by way of example, if he had a file whereby he needed to do a road trip to talk to a client, protocol required that he come and present it to Ms. Maclellan before hand. She would want to know why the road trip was necessary, and if she agreed with his reasoning, she would authorize it. Similarly, before a file closed or a warrant issued, Ms. Maclellan would have to sign off on it, and assure herself that the file was up-to-date, and that the notes had been made correctly.

[202] Despite their workload at the time, Ms. Maclellan was the person who allowed him to work a special shift during 2003, after he explained to her the difficulties that his wife's pregnancy was causing for the family. She relieved him of the necessity of being on call during the course of that pregnancy, so that he could be home with her if a problem arose.

[203] In 2003, during the school year, his eldest daughter went to Mount Saint Vincent University, and his sister-in-law "pitched in" to drive her to school. She happened to be a director at a daycare facility out that way, and generally went to work between 8:00 a.m. and 9:00 a.m., and so could drop their daughter off at the University. He, in turn, would pick his daughter up after work during the school year. He worked either 7:00 a.m. to 3:00 p.m. or 8:00 a.m. to 4:00 p.m. shifts, but would generally pick her up by 5:00 p.m. As he put it, "sometimes she had to wait for me, and sometimes I had to wait for her".

[204] During the summer months, she worked at a Tim Hortons in Dartmouth. During these months, he only had to pick her up after work shifts occasionally, because she had other means of transportation some days.

[205] Mr. Willis said weekdays were long ones. He finished work, and Amelda's mother would leave when he got home. Whatever her mother had not managed to get done, he would do with the assistance of his daughter. It was a little easier on Saturdays and Sundays when he was not working.

[206] His evidence was that he at no time went to Prince Edward Island or left the Province of Nova Scotia during 2003, either in the course of his work, or on vacation. During that year he had two vehicles, one was a white Suzuki Sidekick, with black and green stripes on the side, which was a convertible, which he had purchased for

his wife for her birthday, and the other was a blue van. He and his wife used these vehicles interchangeably.

[207] In 2002 and 2003, Mr. Willis recollected that (at work) they often used walkie-talkies and a landline to communicate. There might have been one or two cell phones for the use of the department, but he said they did not use them much, and that they were only used for special purposes. During the workday, they would converse on the landline.

[208] Mr. Willis was referred to the exhibited "case highlights" of A.A.'s file (Exhibit "7"). He explained that these would have been created around the time that the warrant for her arrest was issued, on December 8, 2003. He would have compiled them after having referred to earlier entries which he had made in her file, which in turn had been inserted in the file based on entries in his notebook.

[209] Referencing the entry for January 27, 2003, which indicated that "client was issued PRRA", Mr. Willis explained that she would have attended CIC's Brunswick Street office. Since this was Mr. Willis' file, he would have met with A.A. in an interview room and provided her with the PRRA package.

[210] Generally, this would be something he would do by himself rather than with a partner. He would gather information from her with respect to family, friends and any other pertinent information needed in case he had to try and locate her later on. He agreed that it would be typical to question the client with respect to whether they were working. If A.A. told him she was employed, he would have made note of the fact, the name of her employer, and contact information with respect to the employer.

[211] Mr. Willis also testified that, following the negative PRRA decision, A.A. would have been requested to come into the office in order to be advised of the results. He testified that he would not have told her of the results over the telephone, and that it was not his practice to do so, because clients have to be personally served with the decision, and often times they would simply not attend if the result is negative. What he would have done, he explained, was tell her that a decision had been made, and that she needed to attend the office in order to receive it. A.A. was his first PRRA removal.

[212] Mr. Willis' attention was directed to the case highlight note dated April 14, 2003 "client was advised of negative PRRA decision". He indicated that he would have met with A.A. personally in order to provide that information, and that Mr. Lawrence would have been present with him at the time. Any time a negative result

was delivered, it would be done with another officer present in case the situation turned hostile. A.A. would have been advised that arrangements would be made for her departure shortly, and that she would be contacted once these arrangements had been made. She would have been advised to put her affairs in order so as to facilitate her imminent departure from Canada.

[213] After 15 days, a client's "departure order" automatically becomes a deportation order. The system makes the order automatically and it is noted in A.A.'s case highlights as having occurred on May 9, 2003, in a handwritten note penned by the accused. Sometime between that date and the beginning of June, Mr. Willis recalls that A.A. contacted him by telephone, while he was at the office, and asked to meet with him to discuss "other possible options". He testified that he told her there were no other options, and, when he asked her what her concerns were, she responded to the effect that she did not like to discuss personal business on the phone.

[214] When Mr. Willis suggested that she come into the office to discuss these concerns, she alluded to the expense of travelling from her home to Halifax. She asked if she could meet him at a Tim Hortons that was close to where she lived, instead.

[215] It was an unusual request. Mr. Willis testified that he met with his supervisor, Mary MacLellan, who gave him permission to do so. Since the meeting with A.A. was to be occur in the afternoon on the arranged date, and he would have to pick up his daughter from University, he took his personal vehicle (which would have been the Suzuki sidekick at the time) to the meeting. That way he did not have to drive the work vehicle back to Halifax and pick up his own vehicle, before picking up his daughter.

[216] The meeting at Tim Hortons would have occurred sometime during the May 9 - June 1, 2003 continuum. A.A. was sitting at a table by herself when Mr. Willis arrived. He said she thanked him for meeting with her, and, when he asked her "how can I help you" she asked him if there were any other options that would permit her to stay in Canada. He reminded her that he already told her "no" on the telephone, and that when travel arrangements had been made he would let her know. She then specifically asked him if it would be possible to remain in Canada if she were to marry a Canadian. He responded in the negative, and indicated that it would be what they referred to as a "marriage of convenience", and that they encounter these a lot in their line of work.

[217] At this point, A.A. appeared dejected and he asked her if she was okay. She asked him how it was possible for him to do so well in this country. He explained to her that he was born and raised in Canada, and told her some things about himself and his family. She asked him about the education that was required in order for him to do his job, and he told her that he attended at Dalhousie and Saint Mary's Universities. She asked him about interests or hobbies and he told her that he liked to watch and play hockey, to which she responded "I didn't know black people played hockey."

[218] Mr. Willis was questioned multiple times, both on direct and cross, on the topic of why he would meet with her at all. What purpose could it serve if she was subject to a deportation order anyway, and had no options? Moreover, why would he provide personal details to her in any event? The tenor of his (cumulative) multiple responses amounted to the effect that, first, he could not close her file until she got on the plane. If there was anything that could impact her ability to do so or prevent her from cooperating with the departure order, he needed to know. Second, sometimes people are more inclined to be cooperative with the process when they see the people from CIC as human beings. He said this was neither the first time nor the last time that he told a potential deportee personal details about himself. Finally, she was (supposedly) leaving the country anyway, so what harm could it do?

[219] He explained that, by the time of the meeting, he did not yet have firm departure arrangements made, but he had been made aware of tentative arrangements to remove a number of criminals from Canada to Nigeria on a flight in the near future. He recalled telling A.A. about that, and reassuring her that he would do what he could to see that she was not put on that flight, in any event.

[220] Subsequent to the meeting, he was provided with A.A.'s travel itinerary by Paul Coolen, who also worked at CIC, although not in the accused's department. When he received this information, on June 18, 2003, he contacted A.A. and provided her with the details, specifically, that her deportation flight was to occur on June 24, 2003, departing at 11:35 a.m., and she should be at the airport no later than 10:00 a.m. that day. He advised her that he would meet her at the airport and provide her with her passport, and that she would have a connecting flight in Montréal. The CIC people in Montréal would coordinate the remaining portion of her return flight to Nigeria. That was the last time he spoke with her.

[221] On June 24, 2003, he attended the airport with Guy Lawrence, and A.A. did not show up for her flight. He went back to the office, did some CPIC and FOSS

checks (the latter to see if there were any indications in the records as to where or if A.A. was working at the time) and called A.A.'s landlord to see if she was still living there.

[222] The next day, June 25, 2003, he attended (with Mr. Lawrence) at A.A.'s last known address, on F Street. This time, he spoke personally to her landlord, Mr. C. The file note made by the accused, indicates that Mr. C. advised him that A.A. had vacated the apartment on June 19th, and had not returned.

[223] Having failed to obtain further information with respect to A.A.'s whereabouts by then, on July 7, 2003, Mr. Willis contacted Mr. C. again, and was once again advised that the latter had not had any contact from the complainant in the interim. There were no further developments with respect to A.A.'s file until October 27, 2003, when his office received an anonymous tip that A.A. was working at (employer) C.

[224] Typically, such tips are received by the front office, and would be provided (generally by the supervisor) to the officer in charge of the particular file to which the tip relates. Upon being advised of the information, on October 29, 2003, Mr. Willis and Mr. Lawrence attended the premises of C, speaking to a Ms. B. who had identified herself as a shift supervisor. They were advised that A.A. had not worked at C since July 2003. That was the extent of his work on A.A.'s file, other than his follow-up with the warrant.

[225] On December 8, 2003, the warrant was issued in relation to A.A. This process is initiated by the officer responsible for the file doing up a warrant and sending it to the Warrant Response Centre in Montréal. They will check to make sure the information is all correct, and, once the warrant is issued, the information gets entered in the FOSS system, and would be put in CPIC as well.

[226] Mr. Willis testified that when he prepared A.A.'s warrant, this was the first one that he had ever done since he was hired for the job. He consulted with his colleague, Joanne Johnson, as to the procedure that was involved. The removal warrant package was prepared by him and sent to the Immigration Warrant Response Centre in Ottawa. This package was tendered as Exhibit "6" and included the "case highlights" to which previous reference has been made. Mr. Willis also prepared and included in the package a warrant for arrest, but the first warrant that he prepared was rejected by the Ottawa office, because he had incorrectly configured Ms. A's first, middle, and last names. Upon his correction of the error and resubmission of the warrant, it was issued on December 8, 2003.

[227] Upon issuance of the of the warrant, Mr. Willis testified that he received no negative comments or feedback as to the length of time that had elapsed before he had taken the step. He heard nothing negative from his supervisor, his colleague Joanne Johnson, Guy Lawrence, anybody else in his department, or even from the Ottawa office, for that matter.

[228] He described his experience, however, in 2003 and beyond, as nonetheless distressing. He felt overworked. He also felt that the environment had become increasingly hostile, after Pam Taylor took over as supervisor at the end of that year. He continued to grapple with the stress caused by his wife's significant illness during the remainder of her pregnancy, the crushing workload with which he was attempting to deal, and the fact that he felt that he had been provided with inadequate training compared to the rest of his colleagues.

[229] Then came the internal investigation, in 2005, to which previous reference has been made. In or shortly after this time, Mr. Willis' and his wife decided to separate. They remained separated for two to three years before they reconciled.

[230] Post investigation, he returned for approximately one year to his former office and department, but it was not the same. Notwithstanding his exoneration, he felt embarrassed and demeaned. He testified that he was still very depressed. He did receive an opportunity to go for more training to Richelieu, Québec, and availed himself of that opportunity.

[231] A new job opening came up. CBSA was looking for someone to train new recruits in "use of force" techniques. He applied for that job, and used Guy Lawrence as a reference. He was the successful candidate and, in 2008 or 2009, moved to Pointe-Claire, Québec with his wife (they had reconciled by this time) and family, where they have lived ever since.

[232] Contrary to the request that Det./Cst. Shannon testified that he had made to his Montréal colleagues (that Mr. Willis be arrested at his residence as a professional courtesy) he was arrested at work in front of all of his coworkers. He had never endured a similar experience in his life to this point. While detained in Québec awaiting transportation to Halifax, he slept on a mattress on the floor with other people who had been arrested. He was unable to sleep because he feared for his safety, as a law enforcement officer. He did not have access to his medications, which helped him with a cardiac condition, and also helped him to sleep. He testified that all of this took him right back (mentally) to 2005 – 2006, when he was subjected

to the internal investigation and the humiliation of being escorted out of his work premises on Brunswick Street.

[233] Mr. Willis testified that the police officers who brought him from Montréal to Halifax treated him well, but he still was not sleeping. At the time he met with Det./Cst. Buell, he had not slept very well for days.

[234] The videotape of his police interview shows him unable to chronologically detail the schools or universities that he had attended, or the jobs that he had before CIC/CBSA. He also advised the officer that he was living “common-law”, that he and his spouse had five children, and that he had a girlfriend. He said that he had no recollection of A.A., and, as indicated earlier, Det./Cst. Buell did not show him a photograph during the course of the interview. Nonetheless, Mr. Willis vehemently denied any sexual encounters with any of his former clients, stating several times that he would not jeopardize his family or his career by doing such a thing.

[235] The accused testified that in 2003, he was definitely circumcised, and in fact, has been circumcised for as long as he can remember. He expects that the procedure was done shortly after his birth. Dr. Buckley's notes indicated that Mr. Willis told him that his mother is still alive, although now in her 90's, has difficulty remembering the names of her children, and consequently was not able to assist with respect to that detail.

[236] Mr. Willis testified as to the scars and other bodily markings to which previous reference has been made. He said he acquired the scar on his right wrist after he cut it on broken glass around 2001. The tattoo on his right arm was obtained, he thought, around 2010, and the other incisions referenced by Dr. Buckley were acquired via a hernia operation that he underwent after he had moved to Québec, and an earlier prostate surgery in 2005.

[237] During his testimony, the accused denied each and every allegation of impropriety made by A.A. He reiterated that most of what she claimed to know with respect to his life was relayed to her at the one “in person” meeting that they did have outside of the office, at the Tim Hortons in late May/early June 2003. Moreover, she would have seen the vehicle that he drove to get there.

[238] On cross-examination he testified that he at no time told her about the "bring forward" or BF system at the office, with respect to files in the "back room", and had no idea of how she would have acquired such knowledge. He added that, if his supervisor had said "no" when he asked her about the going out of the office to meet

with A.A., the meeting would have never occurred. Mr. Willis also stated that, while it was not "typical" for him to provide personal detail to a client, it was not particularly unusual either, and he added that he has provided personal information to clients before A.A., and after, and has never experienced any difficulty or reproach or adverse consequences for having done so, until now.

[239] Mr. Willis went on to deny that at the Tim Hortons meeting he had complimented her on her smile adding, "that would be inappropriate". He also denied that he had called her two or three days after that meeting with respect to a flight change from June 29, 2003 to June 24, 2003. Rather, he insisted that he called her on June 18, 2003, to give her the details of the flight, which was always set to take place on June 24, 2003. He specifically denied contacting her on June 23, 2003 (which it turns out, was a Monday) by telephone, and/or participating in any other in person meetings, after the one that took place at the Tim Hortons restaurant. He also said that, if there was a file record of an employer and an address, he and Guy Lawrence would definitely have gone to that work address that very day, after she did not turn up at the airport for her departure flight, on June 24, 2003.

[240] When shown the transcript of his testimony at his earlier trial, also during cross-examination, he acknowledged that he had said that after the meeting at Tim Hortons with A.A., he had gone back to the office in Halifax, whereas in his direct evidence in this trial, he said that he had gone to the University to pick up his eldest daughter, and that was why he had brought his personal vehicle with him. He explained that between the first trial, and this one, his daughter had reminded him that he had picked her up at school on that date.

(ix) *James Hay*

[241] The last witness to testify was James Hay. He lived in the same apartment building as A.A., on C Street. He moved into the building sometime in 2002, and moved out in August 2003. He was unemployed at the time, and lived alone. A.A. moved to the building in 2003, and he recalled that their stays only overlapped by a few months. He testified that at the time, he was suffering from depression and was living alone. He had earlier met A.A. through her brother F.A., and he had met F.A. through R.D., who was F.A.'s partner.

[242] During that time period, he was off of work due to a disability (depression). The building was owned by R.D. at the time. For him, on a typical day, he said he

would not do much. He might walk his dogs, but he was basically keeping to himself and staying at home.

[243] Like him, A.A. lived alone. She seemed to keep to herself, and he only ever saw her with one person who came and went, at least during the interval that he lived there. On one occasion he met this person as they were leaving the building, and while he was outside building flower gardens on the premises. The two then got into a car parked beside the building and left.

[244] The other person he described as "a black guy". He described A.A. as black and dark complected, whereas the man that he saw A.A. with was "lighter skinned". He recalled being interviewed by the RCMP at one point while he was living in New Brunswick during the course of their investigation, and he also testified at the preliminary inquiry in this matter. He indicated that he had been asked to try and identify the male that he had seen with A.A., and was shown Exhibit "20" which was a photo lineup which recorded the results. This document was dated April 4, 2016, and he indicated that the results noted thereon were accurate to the best of his recollection. The notes thereon indicated that he was 50% sure that the man with A.A. was photo number nine, and less than 50% sure with respect to photo number six. Patently, neither photo depicts Mr. Willis, whom A.A. had described in her testimony as dark complected and looking pretty much the same in 2003 as he did at trial, a point which was also confirmed by Mr. Willis and Guy Lawrence in his testimony.

Analysis

A. Credibility in general

[245] As was noted relatively early in these reasons, and as is so often the case in a sexual assault trial, the importance of credibility to the findings which I must make cannot be overstated. It has often been observed that there are two components to credibility. These are truthfulness and accuracy. Truthfulness is used to signify veracity, and accuracy is often referred to as "reliability". The problem sometimes arises when "truthfulness" is conflated with credibility, because it can be very easily seen that sometimes an otherwise credible witness can give unreliable testimony, whether because of a faulty memory or some other oversight.

[246] As Doherty, J.A., observed in *R. v Morrissey*, [1995] OJ No, 639 (CA):

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 a witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of the 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 the witnesses veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of the witness's testimony, one speaks of the reliability of that testimony. Obviously, a witness whose evidence on the 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.

[247] Reference is often made to the fact that the assessment of credibility is an inexact science. In fact, it is arguable that it is not a science at all, given that it is often difficult to articulate the complex individual components of such an exercise in any given set of circumstances.

[248] In *R. v DDS*, [2006] NSJ No. 103 (NSCA) Saunders, J.A., as he was then, put it quite well:

77. ... it would be wise to consider what has been said about the trier's place and responsibility in the search for truth. Centuries of case law remind us that there is no formula with which to uncover deceit or rank credibility. There is no crucible for truth, as if pieces of evidence, a dash of procedure, and a measure of principle mixed together by seasoned judicial stirring will yield proof of veracity. Human nature, common sense and life's experience are indispensable when assessing creditworthiness, but they cannot be the only guide posts. Demeanour too can be a factor taken into account by the trier of fact when testing the evidence, but standing alone it is hardly determinative. Experience tells us that one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?

[249] The assessment of credibility is one of the tools utilized by the trial judge to determine the raw material (the evidence) upon which the case is based. But the process does not exclusively rest upon whether the accused or complainant is perceived to be telling the truth. Otherwise, the accused would be required to be more credible than his accuser, and disprove his guilt (*R. v Vuradin*, 2013 SCC 38), as has been noted earlier.

[250] In a case comment on *R. v. C.L.Y.*, [2008] 1 S.C.R. 5, Professor Janine Benedet noted that the process of assessing credibility is not a simple weighing of evidence:

But the evidence should be assessed in light of any contradictory (or confirmatory) evidence led by the accused. This is not necessarily because of concerns about the burden of proof, since it is possible to believe the complainant without the next step of making a finding of guilt, but because the credibility of the complainant cannot be assessed solely on the basis of whether her evidence is internally convincing and consistent. The task of the trial judge is to synthesize the evidence from various sources on each element of the offence so as to make finding of fact on the whole of the evidence. The concurring justices warn that to do otherwise increases the risk that the trial judge may approach the accused's evidence looking for reasons to discount it. ...

[Emphasis added]

[251] Moreover, the trier of fact's focus cannot be to attempt to determine what actually happened. Sometimes, it is not possible to do so. Rather, the burden of proof requires that focus to be, at all times, upon whether the Crown has demonstrated the guilt of the accused "beyond a reasonable doubt".

[252] As articulated in *W.D.*, in *R. v Lifcus*, [1997] 3 SCR 320, and in the many other iterations of the concept found in case law over the centuries, this involves a consideration of whether, on the basis of the evidence that I have found, including that arrived at through assessments of the truthfulness and accuracy of the various witnesses, I am sure of the accused's guilt. Put differently, although appositely, I must ask myself whether the evidence leaves me in doubt of his guilt. This is the lens through which I must examine it.

[253] At the conclusion, when I have finished scrutiny of the evidence, I must be satisfied beyond a reasonable doubt that Mr. Willis is guilty of the offences with which he is charged. Otherwise, he is entitled to an acquittal.

B. Crown Evidence

[254] I begin by observing that A.A. presented as a very intelligent and articulate person. Her outward demeanour, and the poise which she displayed while giving her evidence, was noteworthy. I considered her ability to remember details such as (in some cases) the exact clothing worn by Mr. Willis during the various encounters which she described, the physical characteristics of the second person in the CIC office when she met Mr. Willis for the first time, in early 2003, and other things such as her precise recall of the arrangement of the furniture in the CIC office, and the arrangement of her furniture the first time Mr. Willis came to her apartment on F. Street. This was truly remarkable, particularly given that these events occurred over 19 years ago.

[255] Yet, she could not recall her earlier civic address on F Street, and I was struck by how generic her description of the hockey sweater was, the one which she indicated Mr. Willis had tried to wash in a bucket at her apartment the night she said he stayed over. Also, I was unclear as to why it would have been necessary for Mr. Willis to wash his hockey sweater that precise moment, while at her apartment, and why in a bucket, when she had ready access to a washing machine, which ultimately she said she ended up using to assist him to wash it.

[256] Another concern that I had with respect to her testimony was the obvious one. She mentioned several times that her overarching goal was always to remain in Canada. On her application for refugee status in early 2003, she admitted that she lied when she said she feared genital mutilation and a forced marriage if she returned to Nigeria. She admitted that she misled her parents, who were paying her expenses while she remained in Canada ostensibly pursuing University studies on a student visa, and did not tell them that she had dropped out, or that she had relocated to another apartment. Her testimony was that she did not even tell them when she was facing deportation, in June 2003, back to Nigeria.

[257] Similarly, after leaving university, and when her student visa was about to expire, she re-enrolled in a cosmetology/aesthetics course, which was apparently sufficient for the renewal of her student visa. She remained in the course for about a month and then dropped out of that. She was able to obtain employment at C, despite the fact that she remained in Canada on a student visa.

[258] A.A. says that Mr. Willis called her on June 23, 2003 (which was a Monday), initially inquiring as to whether she had notified her landlord that she would be leaving the country the next day on her departure flight, and to make sure that her affairs were in order to permit that to happen. She says that is what led to her inviting him over to her apartment to "discuss her options". Mr. Willis says the conversation did not take place that day, and that his last conversation with her occurred over the telephone on June 18, 2003, as noted in the "case highlights" in A.A.'s file. A.A. also said that until her conversation with the accused when he came over that evening, she had not made up her mind as to whether she would get on the flight the next day, and that it was Mr. Willis' advice on how to live a life in Canada as "an illegal" that prompted her to fail to show up for deportation the next day. As she put it "I felt that I had his blessing" to take that path.

[259] Despite the fact that she said that she had not yet made up her mind by the time of Mr. Willis' visit to her apartment on June 23, 2003, within approximately an

hour of when she said he departed her apartment that evening she had already arranged to move to another apartment, and in fact says that she moved out that very night. I contrast this with the note made in the file (albeit by Mr. Willis) that her landlord had informed him on June 25, 2003 (at a time when the file notes business records indicate that Mr. Lawrence was present also) that she had vacated the premises on June 19, 2003, which was one day after Mr. Willis testified that he had actually called her.

[260] To be fair, I also note the fact that the apartment into which she moved was in a building owned by R.D., her brother's partner. So it is possible that a quick relocation could have been effected by her, in the manner to which she testified.

[261] I further consider that she was resourceful enough to secure the new apartment on C Street, obtain employment as a Nanny despite being in Canada illegally, and continued with that employment until 2014, when she consulted with Mr. Cohen and Katie Tinker about gaining permanent resident status on humanitarian and compassionate grounds (prompted by her brother, F.A., trashing her apartment, and the realization that she could not go to the police about it because of her status). It was not until A.A. became concerned that CBSA was going ahead with her deportation, notwithstanding her application on compassionate grounds, that she mentioned the sexual relationship with Mr. Willis.

[262] With all that having been said, though, the overall effect of much of her testimony was nonetheless compelling. And there is no denying that she possessed a remarkable wealth of knowledge with respect to Mr. Willis' personal life and family, and the workings of CIC/CBSA, particularly that of the office "backroom", where a dormant file is stored until it is either brought forward for follow-up at regular long intervals, or when information such as a tip is received pertaining to it.

[263] Obviously, all of the Crown's evidence was considered, including that of Mr. Lawrence. His testimony that the length of time that elapsed before the warrant was issued for A.A. (six months after she failed to show up for her departure flight) was both unusual and way outside the norm. He also said that it was not permissible to meet with clients outside the office, and/or utilize one's personal vehicle while doing so. This was particularly informative and pertinent.

[264] Mr. Lawrence gave his evidence in a straightforward manner, and had no animus toward Mr. Willis whatsoever. In fact, their relationship was a good one, a fact to which both he and Mr. Willis testified, so much so that Mr. Willis used him

as a reference when he applied for, and eventually obtained, his current position with CBSA.

[265] I have considered all of the evidence. I will only make further mention of the evidence of Crown witness F.A. He testified that A.A. had told him, in late 2003 or 2004 of the sexual relationship with the accused. This is not evidence of the veracity of those details. It could only have been used if the Defence had argued that she had recently fabricated the story, and, even then, only to disprove that recent fabrication. It still would not mean that what she told him was the truth.

C. Defence Evidence

[266] Obviously, the most vital component of this evidence was that of Mr. Willis himself. I consider that evidence, in conjunction with the Crown's evidence, and the rest of what the Defence offered. The accused, too, was well spoken and articulate. But his evidence differed at times from what he had said to Det./Cst. Buell during their interview, and in a few instances, from the evidence that he had given in his first trial.

[267] To deal with the latter first, the most prominent example concerned the one occasion to which he admitted meeting with A.A. outside of the CBSA offices. It occurred at a Tim Hortons proximate to where she was living at the time. Mr. Willis testified that he took his personal vehicle with him on this occasion, because he would be picking up his daughter from University after the meeting and wished to save himself a trip back to Halifax to exchange the work vehicle for his personal vehicle before doing so. He was confronted, on cross-examination, with the testimony that he had provided at his first trial, which was to the effect that after meeting with A.A. at the Tim Hortons, he went back to work in Halifax.

[268] His explanation for this inconsistency was to the effect that, between the first trial and the second (this) one, he had spoken with his daughter who had reminded him that he had picked her up at University that day.

[269] In my view, it could not possibly have happened that way. Mr. Willis himself was unsure of the day that meeting took place and, in fact, he put it somewhere on a continuum between May 9 and June 1, 2003. If he himself could not recall the precise date, and in fact he could not do so at his first trial either, how could his daughter have possibly reminded him that he had picked her up at University "that day"? Moreover, Ms. Willis testified that the University school year ended in April 2003, and their daughter worked at Tim Hortons during the summer months.

[270] I observed Mr. Willis closely during the course of his *viva voce* evidence. When pressed on cross-examination about his decision to take his personal vehicle to the Tim Hortons meeting, and what his daughter had allegedly told him after the first trial, his demeanour changed markedly. He no longer appeared calm, and appeared rather stressed. This change seemed to disappear once cross-examination moved to another topic.

[271] Should I interpret this as having tainted his entire evidence? I remind myself that I can accept all none or some of the evidence offered by any witness, and further that the Crown's duty is to convince me of Mr. Willis' guilt beyond a reasonable doubt, while the defence need prove nothing. One interpretation of his having provided evidence that is untrue, on this point, might certainly be unfavourable to my reception of a large portion of his evidence, if not all of it. After all, he was trying to explain why he brought his personal vehicle to the meeting, as opposed to a work vehicle. The fact that he brought the former with him would provide an arguable explanation as to how A.A. knew (albeit, in a general sense) the type of vehicle he was driving at the time.

[272] There are other possible interpretations as well. For example, perhaps he improperly used his vehicle for work on this occasion (somewhat like the actions for which he was investigated in 2005), and he feels that the fact that he did so makes him look bad in light of these charges. So perhaps he felt he had to shore up his case on that point. After all, he was convicted after the first trial. Perhaps there are other reasons.

[273] However, I must not speculate. Rather, I must determine what impact this disingenuousness has on the rest of his evidence.

[274] Then, there is the contrast between some of the things that he told Det./Cst. Buell, and what the accused said on the stand. Before this topic is discussed, it needs to be clear that what counts as "the evidence" offered by Mr. Willis in this proceeding is only what he said on the stand. Evidence of what he said elsewhere, if I am satisfied that he said it, only matters if it affects my assessment of the veracity of what he said in Court.

[275] Without delving exhaustively into the minutiae of each and every remark that he made to Det./Cst. Buell in the course of their lengthy interview, it is clear that he told him that he did not remember A.A., that he and his wife were (in 2016) separated, and that he had a girlfriend. The accused also had extreme difficulty listing the schools he had attended sequentially, and the order of his employers.

[276] As noted earlier, Mr. Willis evidenced none of these problems when he testified in court. He explained that he genuinely did not remember A.A. when interviewed by Det./Cst. Buell, but did do so when he saw her face at the Preliminary Inquiry. Det./Cst. Buell himself acknowledged that he did not provide Mr. Willis with a picture of A.A., but it is currently his practice to do so in these types of situations.

[277] I will also observe that, as to the other above-noted inconsistencies in the interview, if they were fabricated, it is difficult to discern how they could have possibly assisted Mr. Willis vis-à-vis the charges that he was told he was facing. His marital status was largely irrelevant, and could presumably have been easily discovered in the course of the investigation, as could the schools that he had attended and the jobs that he had held. These inconsistencies were mostly with respect to peripheral facts.

[278] Although his confusion was not so marked as to lead me to exclude what he said to Det./Cst. Buell on the basis that it was not the “product of an operating mind”, the interview did happen after an extremely embarrassing and distressing arrest that had occurred in his workplace. He had also experienced subsequent detention and sleep deprivation, brought on partly by fear for his safety as a law enforcement officer while detained with other arrested individuals, and partly because of an inability to access prescription medication. Some confusion on Mr. Willis' part was evident. With that having been said, he forcefully denied in the interview any type of wrongdoing *vis-à-vis* A.A. or any of his former clients.

[279] Likewise, in his testimony at trial, he emphatically denied his guilt with respect to these charges, and in particular denied ever visiting A.A. at her apartment. He said he did not go to her work on June 24, 2003, because the fact that she was employed was not in her file information. Guy Lawrence had testified that it was a regular question to ask of someone at their initial meeting with CIC (i.e. when A.A. showed up at their office in January, 2003 about the PRRA hearing) whether they were employed. Mr. Willis did not disagree with this, but the only way A.A.'s file would reflect that she was working at C would be if she admitted that she was doing so when asked the question. At the time she was living in Canada on a student visa that had expired.

[280] When he went to A.A.'s home on June 25, 2003, he brought Guy Lawrence with him. The notation he made in his notebook of his interview with her landlord, which was transposed into the case highlights in A.A.'s file, record that the latter

told them that she had left the premises on June 19, 2003 (the day after Mr. Willis said he had called her to see how she was progressing in getting her affairs in order for departure) rather than on June 23, 2003 after (as A.A. testified) Mr. Willis had visited her at her home.

[281] His evidence was that he tracked down the few available leads that he had, and in fact again took Mr. Lawrence with him in late October 2003 when an anonymous tip led him to visit C, A.A.'s former employer. It was not until December that Mr. Willis got around to doing up a warrant. That certainly seems unusual, particularly given Guy Lawrence's testimony.

[282] With that having been said, Mr. Willis testified that this was his first "no show" and the first time he had to do up a warrant. It has been documented, in the aftermath of the 2005 internal investigation which exonerated him, that Mr. Willis had been provided with inadequate training by his employer, particularly when compared to his coworkers. Recommendations were made to CBSA in the report prepared in the aftermath of that investigation to correct that deficiency.

[283] In tandem with this, I noted no evidence of any "hue and cry" in the aftermath of Mr. Willis having filed the documents ancillary to the warrant for A.A. on December 8, 2003. Not from co-worker Joanne Johnson, not from Guy Lawrence (who said he was unaware that the warrant was not taken out until December 8, 2003), not from his supervisor, and not even from the warrant office in Ottawa.

[284] Moreover, Mr. Willis testified that he was unaware of where Mary MacLellan (his former supervisor) was presently, that Pam Taylor had passed away during the intervening years, Joanne Johnson had relocated to "the West", and so none of them could be located in order to testify.

[285] Amelda Willis testified and her evidence was largely accepted. She could have been mistaken about the number of hockey teams upon which Mr. Willis was playing in 2003, because she said he played in a gentlemen's league at the Cole Harbour arena on a team called the Mighty Ducks, whereas Guy Lawrence testified that Mr. Willis also played with him on an Immigration hockey team, which did not play regularly, but if they did, would play on Monday nights.

[286] She gave birth to her son in early January 2004, and had a good recollection of 2003 because she endured what appears to have been a very harrowing pregnancy. She needed all hands on deck to assist her, and when Mr. Willis was not working she needed him at home. As she put it, his presence would have been missed.

D. Conclusion

[287] Applying the three-part test in *W.D.*, I look first at the defence evidence and in particular, that of Mr. Willis. I consider that evidence within the context of all of the other evidence. As I said earlier, I am of the view that Mr. Willis definitely lied with respect to at least one aspect of that evidence. I was less troubled by what he said to Det./Cst. Buell, given the nature of the inconsistencies that surfaced during that interview, in light of what he had endured from the time he was arrested at his place of work in Québec, until he was interviewed in Halifax.

[288] The accused admitted that he went to Tim Hortons and met A.A., sometime between May 9 to June 1, 2003 during the course of which conversation he told her many of the things about himself to which she testified. He testified that he took his personal vehicle to that meeting, even if he was untruthful as to why he did so. Ms. A.A. made a point of saying that she did not notice the vehicle that he drove to that meeting, or at the second meeting at Tim Hortons (which he denied but which she asserted took place). She made a further point of saying that she did not notice his vehicle until he drove it to her apartment on C. Street, a visit which Mr. Willis denies ever took place.

[289] A.A.'s testimony has her resisting Mr. Willis' advances until well into October 2003, that she finally succumbed to his advances during the latter part of that month, and that she no longer resisted on subsequent visits by him to her home. She also has him "away" for approximately three weeks, returning in the early part of December, apparently disinterestedly performing oral sex upon her, and then taking his leave of her with a "parting shot" just before the warrant was issued. Yet she would have been aware of the date of that warrant, December 8, 2003, when she was served with it.

[290] It cannot be said that I disbelieved A.A., despite the incongruity of some of the evidence that she gave. Some aspects of her testimony I found to be "compelling", and I do not resile from that descriptor. I also commented earlier upon her remarkable recall, for example, with respect to articles of clothing worn, and furniture arrangements almost 20 years ago. This, in itself, is no indicator of fabrication, nor does it provide a basis to disbelieve her, even if some victims of the acts that she described would have difficulty remembering much or anything, given the trauma and the passage of time.

[291] Indeed, there is no one template for behaviour by a victim in the aftermath of the type of trauma described by A.A. Responses to trauma are myriad. Some victims

may have ancillary details like clothing, furniture arrangement, personal details that were revealed to them by an accused, and other things, seared into their consciousness by virtue of the traumatizing nature of what took place. The psyche of others may respond to the same or similar trauma by burying the details. Some others may respond in a hybrid fashion, causing them to recall certain of the surrounding events in striking detail, while at the same time leaving lacunae with respect to others. Still others may respond in other ways.

[292] But I come back to something that I said earlier. The presumption of innocence cannot be reduced to a mere credibility contest, particularly between the complainant and an accused.

[293] A.A.'s evidence was that Mr. Willis was uncircumcised, whereas Dr. Buckley deposed that he was circumcised, and that even though it was impossible to pinpoint when the circumcision had been performed, it was overwhelmingly likely that the procedure had predated 2016, which is when Mr. Willis learned of the charges against him. Mr. Willis testified that he has been circumcised for as long as he could remember.

[294] It is also true that Amelda Willis testified that she had met her husband when they each were 17, and that he was circumcised at that time. Although she would have an obvious motive to lie on this point, I could detect no indication that she was anything other than truthful with respect to any of her evidence.

[295] Did he actually postpone his application for the warrant until December 8, 2003, to fulfill his part of the "deal" that A.A. says Mr. Willis struck with her, or was it indeed a product of working on his first removal warrant, coupled with the lack of training which the internal investigation in 2005 had confirmed?

[296] On the vast canvas of the evidence of this case as a whole, Mr. Willis testified that any information that A.A. knew about him was provided to her at the one Tim Hortons meeting to which he admitted. Since he took his own vehicle to that meeting, she would have been able to see it. He denied ever telling her about the file room in the back of their office, and the bring forward system once the file ends up there. He agreed that this would be information to which an ordinary member of the public would not be privy. However, she has been represented at various times by experienced counsel who might be.

[297] A.A. admitted to lying on her application for refugee status, misleading her parents as to her situation in Canada, and residing illegally in the country for over a

decade. I consider hers and all of the other evidence as I evaluate what Mr. Willis said in court. Although the lie which he told, to which I earlier adverted, certainly undermined his credibility and the overall evidence that he gave, I was unable to reject the remainder of his evidence. I juxtapose Mr. Willis' evidence with the rest of the Defence and Crown evidence, and conclude that I have been left in reasonable doubt as to his guilt.

[298] As a consequence, Mr. Willis is acquitted on all charges.

Gabriel, J.