SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. D.C.S.*, 2023 NSSC 25

Date: 20230123
Docket: CRH No. 499649
Registry: Halifax

Between:

His Majesty the King

v.

D.C.S

Restriction on Publication: ss. 486.4 and 486.5 of the Criminal Code

TRIAL DECISION

Judge:	The Honourable Justice Scott C. Norton
Heard:	December 19, 20 and 21, 2022, in Halifax, Nova Scotia
Decision:	January 23, 2023
Counsel:	Nicole Campbell, Crown Counsel D.C.S., Self-Represented Defendant Quy Linh, appointed counsel pursuant to s. 486.3 of the *Criminal Code*

Order restricting publication — sexual offences

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

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

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

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

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Order restricting publication — victims and witnesses

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Justice system participants

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Offences

(2.1) The offences for the purposes of subsection (2) are

(a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

Limitation

(3) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Application and notice

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

Grounds

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Hearing may be held

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

Factors to be considered

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

Conditions

(8) An order may be subject to any conditions that the judge or justice thinks fit.

Publication prohibited

(9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

NOTE: In reducing to writing the oral decision rendered in this matter, editing has taken place to include omitted citations and quotes from secondary sources and to make changes to format or to grammar for readability. No changes have been made to the substantive reasons for decision.

By the Court (orally):

Introduction

[1] DCS is charged on an Indictment dated August 12, 2020, that he:

> 1. Did between January 1, 2013 and January 31, 2020 at Lower Sackville, in the County of Halifax in the Province of Nova Scotia, did unlawfully commit a sexual assault on [R], contrary to Section 271 of the *Criminal Code.*
> 2. AND FURTHER that he at the same time and place aforesaid, did for a sexual purpose touch [R], a person under the age of sixteen years directly with a part of her body, to wit, vagina, contrary to Section 151 of the *Criminal Code*.
> 3. AND FURTHER that he at the same time and place aforesaid, for a sexual purpose, invite, counsels or incites [R], a person under the age of 16 years, to touch directly a part of his body, to wit., penis, the body of [DCS], contrary to Section 152 of the *Criminal Code*.
> 4. AND FURTHER that he at the same time and place aforesaid, being in a position of trust and authority towards [R], a young person, did for a sexual purpose, touch directly the body of [R], a young person, with a part of his body, to wit., his hands, contrary to Section 153(1)(a) of the *Criminal Code*.

[2] The Crown evidence consisted of video and audio recorded statements obtained by the police from DCS; the testimony of the complainant, R (including a video recorded statement given to police and admitted pursuant to s. 715 of the *Criminal Code*); the testimony of R's mother; and the testimony of three police officers involved in the investigation of the matter.

[3] DCS did not offer any evidence, as is his right.

[4] I am satisfied that the evidence establishes, beyond a reasonable doubt, that all of the alleged offences took place in the jurisdiction of Nova Scotia and that the alleged events occurred within the time frame set forth in the Indictment. The

identity of the accused was established by testimony in court from the investigating police officers and the video recorded statement of DCS.

Background

[5] R's date of birth is February 4, 2002. She is presently 20 years old. DCS was born in 1969 (now 53 years old). He began a relationship with R's mother and lived with her, except for various periods of separation, from 2009 (when R was seven years old) until his arrest in January, 2020. For the last two years of this period they continued to reside separately in the same house.

[6] The charges span the years from January, 2013 (when R was 11) to January, 2020 when R was 17.

Admissibility of Video Recorded Statement of DCS

[7] Following a *voir dire* held at the outset of the trial, I ruled that the video recorded statement provided to police by DCS was admissible. I stated then that my reasons for admitting the statement would be included in this decision.

[8] DCS contested the admissibility of the statement on the ground that he was a diabetic and that, as a result of not taking his medication before his arrest on the morning of the interview, there was a reasonable doubt as to whether he had an operating mind.

The Law

[9] The "Confession Rule" adopted by the Supreme Court of Canada in *R. v. Oickle*, 2000 SCC 38, is stated as follows: "confession will not be admissible if it is made under circumstances that raise a reasonable doubt as to voluntariness [on the part of the person making the admission]" (para. 68). The Crown must prove the confession was voluntary beyond a reasonable doubt (para. 30). The "Confession Rule" inquiry is to be contextual and specific, turning on the factors of the particular case. It involves consideration of "the making of threats or promises, oppression, the operating mind doctrine, and police trickery": *R. v. Spencer*, 2007 SCC 11, at para. 12.

[10] These general principles were recently reaffirmed by the Supreme Court of Canada in *R. v. Beaver*, 2022 SCC 54. Justice Jamal, writing for the majority, summarized the general principles at paras 45-48:

(1) The Common Law Confessions Rule

(a) *General Principles*

[45] The common law confessions rule provides that a confession to a person in authority is presumptively inadmissible, unless the Crown proves beyond a reasonable doubt that the confession was voluntary (*Oickle*, at paras. 30 and 68; *R. v. Spencer*, 2007 SCC 11, [2007] 1 S.C.R. 500, at para. 11; Tessier (SCC), at paras. 39, 68 and 89). Under the confessions rule, an involuntary confession "always warrants exclusion" (*Oickle*, at para. 30; see also *R. v. Singh*, 2007 SCC 48, [2007] 3 S.C.R. 405, at para. 38). But a voluntary confession need not always be admitted into evidence. If a voluntary confession was obtained in a manner that breached the *Charter*, it can still potentially be excluded under s. 24(2) (*Oickle*, at para. 30; *Singh*, at para. 38).

[46] At the heart of the confessions rule is the delicate balance between individual rights and collective interests in the criminal justice system (*Singh*, at paras. 1, 21, 27-28, 31 and 34; *Tessier* (SCC), at paras. 4 and 69; *Oickle*, at para. 33). The "twin goals" of the rule involve "protecting the rights of the accused without unduly limiting society's need to investigate and solve crimes" (*Oickle*, at para. 33). On the one hand, the common law recognizes an individual's right against self-incrimination and right to remain silent, such that an individual need not give information to the police or answer their questions absent statutory or other legal compulsion; on the other hand, the police often need to speak to people when discharging their important public responsibility to investigate and solve crime.

[47] Voluntariness, broadly defined, is the "touchstone" of the confessions rule (*Oickle*, at paras. 27, 32 and 69; Spencer, at para. 11; Singh, at para. 31). Voluntariness is a shorthand for a complex of values engaging policy concerns related to not only the reliability of confessions, but also to respect for individual free will, the need for the police to obey the law, and the fairness and repute of the criminal justice system. Involuntary confessions can be unreliable, unfair, and harmful to the reputation of the criminal justice system (*Oickle*, at paras. 32 and 70; *Singh*, at paras. 30 and 34; *Tessier* (SCC), at paras. 70 and 72). A statement may be involuntary "because it is unreliable and raises the possibility of a false confession, or because it was unfairly obtained and ran afoul of the principle against self-incrimination and the right to silence" (*Tessier* (SCC), at para. 70).

[48] The application of the confessions rule is necessarily flexible and contextual. When assessing the voluntariness of a confession, the "trial judge

> must determine, based on the whole context of the case, whether the statements made by an accused were reliable and whether the conduct of the state served in any way to unfairly deprive the accused of their free choice to speak to a person in authority" (*Tessier* (SCC), at para. 68). The trial judge must consider all relevant factors, including the presence of threats or promises, the existence of oppressive conditions, whether the accused had an operating mind, any police trickery that would "shock the community", and the presence or absence of a police caution. These factors are not a checklist that supplants a contextual inquiry (see *Oickle*, at paras. 47, 66-67 and 71; *Spencer*, at paras. 11-12; *Singh*, at para. 35; *Tessier* (SCC), at paras. 5, 68, 76 and 87).

[11] The issue of whether the will of an accused had not been overborne by the lack of an operating mind was addressed by the Supreme Court of Canada in *R. v. Whittle*, [1994] 2 S.C.R. 914. The Court instructed that the focus is on whether the accused has truly been able to make a choice to give the statement:

> 45 The operating mind test, therefore, requires that the accused possess a limited degree of cognitive ability to understand what he or she is saying and to comprehend that the evidence may be used in proceedings against the accused. Indeed it would be hard to imagine what an operating mind is if it does not possess this limited amount of cognitive ability. In determining the requisite capacity to make an active choice, the relevant test is: Did the accused possess an operating mind? It goes no further and no inquiry is necessary as to whether the accused is capable of making a good or wise choice or one that is in his or her interest.

[12] The evidence established that DCS was diagnosed with diabetes in 2008. He uses prescribed medication in pill form called Metformin and injected insulin to control his blood glucose level. On the morning he was arrested and transported to the police station, he had not yet taken these medications after breakfast (as was his routine). Upon learning this from him at the outset of the interview at 11:38 a.m., the police returned to his house to obtain the medication. When they provided him with what they had located in his bedroom at 1:11 p.m., he advised them they had brought the wrong medication. They stated they would check again. At 1:38 p.m. they advised they had looked where he told them it should be but it was not there. He then advised that he could have left it in his car. The police then checked the car and delivered the correct medication to him at 2:00 p.m. and he took the pills and injected the insulin.

[13] DCS did not raise any issue about not feeling well or having any difficulty understanding and answering the questions he was being asked at any time during the interview. On the various occasions he was asked if he was feeling "okay" he replied in the affirmative. I carefully observed the video statement. I did not observe

any change in his appearance or behaviour suggesting any sign of impairment such as confusion, slurred speech or slowness of processing the question or providing an answer. Both police officers who interacted with DCS during the interview testified that they observed no signs of impairment or difficulty understanding or responding to the questions.

[14] DCS did not call any expert evidence on the *voir dire*. He presented to the Court a copy of an EHS Report prepared by a paramedic who was called to the Halifax Regional Police Cells at 5:17 p.m. on January 31, 2020 (the date the statement was taken). The statement, taken at the Lower Sackville RCMP detachment, concluded at 2:58 p.m. DCS did not call the author of the report to testify. The Crown accepted the admission of the report but argued it should be given little weight. On the face of the report, the paramedic author stated they were called by police to verify that DCS's blood glucose level was adequate to ensure he was well. The paramedic noted that DCS was alert to person, time, situation and place and was not in any distress. All of his vital signs were normal. His blood glucose level was measured at 8.6. There is no evidence as to what this means. It was noted that he had his short-acting insulin and Metformin with him and the police were directed by the paramedic to allow him to take his evening doses of both.

[15] In his testimony at the *voir dire*, DCS stated that, in his experience, low or high blood glucose levels could affect your mind or your way of thinking, your train of thought, your concentration. He did not say that he experienced these symptoms during the course of giving his statement. In cross-examination he said he saw changes in his behaviour, in that after taking his insulin he was more coherent, more calm and less anxious. He did not specify any particular question or answer that he said was evidence of this behaviour. He stated that he had no concerns with what he said to police after he was given the insulin. It is important to note that all of the admissions the Crown relies upon were made after he took his insulin.

[16] I am satisfied from the evidence that, at all times during the taking of the statement, DCS had an operating mind as described by the authorities. I find that the statement provided by DCS was voluntarily and should be admitted.

Admissibility of Video Statement of R pursuant to s. 715

[17] The police obtained a video statement from R on January 29, 2020. R was 17 years old at that time. It was played during R's testimony. She adopted it as true and it was admitted as evidence pursuant to s. 715.1(1) of the *Criminal Code*, with the consent of DCS.

Governing Principles

The Presumption of Innocence and Reasonable Doubt

[18] It is not DCS's responsibility to demonstrate, establish, or prove his innocence or to explain away the allegations made against him. He is presumed to be innocent until proven guilty beyond a reasonable doubt. The Crown bears this onus of proof beyond a reasonable doubt throughout the trial and it never shifts. This burden requires the Crown to prove each element of each offence beyond a reasonable doubt (*R. v. Lifchus*, [1997] 3 S.C.R. 320).

Credibility and Reliability

[19] In *R. v. CEG*, 2021 NSSC 305, aff'd 2023 NSCA 1, I summarized the legal principles applicable to the issues of credibility and reliability:

> [13] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152, the majority of the British Columbia Court of Appeal discussed the credibility of witnesses. O'Halloran J.A. said:
>
> > 11 The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...
>
> [14] In *Baker v. Aboud*, 2017 NSSC 42, Forgeron J. gave guidance on the principles governing assessment of credibility:
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> > 13 Guidelines applicable to credibility assessment were canvassed by this court in paras. 18 to 21 of *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100, which guidelines include the following:

* Credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. c. Gagnon*, 2006 SCC 17 (S.C.C.), para.20. ... "[A]ssessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. M. (R.E.)*, 2008 SCC 51 (S.C.C.), para. 49.

* There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety: *Novak Estate, Re*, 2008 NSSC 283 (N.S.S.C.). On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence, *Novak Estate, Re, supra.*

* Demeanor is not a good indicator of credibility: *R. v. Norman* (1993), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55.

* Questions which should be addressed when assessing credibility include:

a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence, and the testimony of other witnesses: *Novak Estate, Re, supra*;

b) Did the witness have an interest in the outcome or were they personally connected to either party;

c) Did the witness have a motive to deceive;

d) Did the witness have the ability to observe the factual matters about which they testified;

e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.);

g) Was there an internal consistency and logical flow to the evidence;

h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant or biased; and

> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[15] Although demeanor should be given little weight in determining the overall credibility and reliability of witnesses, the court in *R. v. Lifchus*, [1997] 3 SCR 320, articulated some of the issues facing a trier of fact when assessing a witness' credibility:

> 29 Nonetheless there is still another problem with this definition. It is that certain doubts, although reasonable, are simply incapable of articulation. For instance, there may be something about a person's demeanor in the witness box which will lead a juror to conclude that the witness is not credible. It may be that the juror is unable to point to the precise aspect of the witness's demeanor which was found to be suspicious, and as a result cannot articulate either to himself or others exactly why the witness should not be believed. A juror should not be made to feel that the overall, perhaps intangible, effect of a witness's demeanor cannot be taken into consideration in the assessment of credibility.

[16] Care must be taken in differentiating credibility from reliability. In *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193, [1995] O.J. No. 639 (Ont. C.A.), Doherty J.A. said, for the court:

> 33. Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. In this case, both the credibility of the complainants and the reliability of their evidence were attacked on cross- examination.

[17] As Justice Arnold noted in *R v Hughes*, 2020 NSSC 143, at para 59, Justice Doherty pointed out that the passage of time can affect the reliability of a witness' testimony. Justice Arnold went on to say, at para 60:

> [60] In *R. v. H.C.*, 2009 ONCA 56, Watt J.A. discussed the difference between credibility and reliability. He stated, for the court:
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> > [41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

> i. observe;
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> ii. recall; and
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> iii. recount
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> events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence...
>
> [42] This case required the trial judge to assess the credibility of two mature adults, T.F. and the appellant, as well as of a child of ten, K.F. Credibility requires a careful assessment, against a standard of proof that is common to young and old alike. But the standard of the "reasonable adult" is not necessarily apt for assessing the credibility of young children. Flaws, such as contradictions, in the testimony of a child may not toll so heavily against credibility and reliability as equivalent flaws in the testimony of an adult... [Citations omitted.]

[18] The difference between credibility and reliability was helpfully explained in *R. v. M.C.J.*, 2015 ONCJ 171 as follows:

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

[20] I must decide whether it is satisfied beyond a reasonable doubt that DCS committed the offences alleged, or any of them. Probability is not sufficient. The standard in a criminal matter is that the Crown must prove the guilt of an accused person, in this case DCS, beyond a reasonable doubt - which lies somewhere between probability and absolute certainty, but closer to absolute certainty.

[21] In *R. v. T.K.B.*, 2021 NSSC 221, I reviewed the legal principles applying to charges of sexual assault and sexual interference:

> Elements of the Offences
>
> [48] The elements of a charge under s. 151 were summarized by the Nova Scotia Court of Appeal in *R. v J.D.C.*, 2018 NSCA 5: "that the complainant was less than 16 years old at the time; that the appellant intentionally touched the complainant either directly or indirectly...; and that the touching was for a sexual purpose" (para. 32).

[49] Touching involves intentional physical contact with any party of the complainant's body and may be direct, for example by the accused's hand, or indirect, for example by touching with an object. Force is not required but accidental touching is not enough. It does not matter if the complainant agreed to the touching.

[50] In *R. v. Barton*, 2019 SCC 33, Moldaver J., for the majority, reviewed the essential elements of sexual assault:

> A conviction for sexual assault, like any other true crime, requires that the Crown prove beyond a reasonable doubt that the accused committed the actus reus and had the necessary mens rea. A person commits the *actus reus* of sexual assault "if he touches another person in a sexual way without her consent" (*R. v. J.A.*, 2011 SCC 28, [2011] 2 S.C.R. 440, at para. 23). The *mens rea* consists of the "intention to touch and knowing of, or being reckless of or wilfully blind to, a lack of consent on the part of the person touched" (*R. v. Ewanchuk*, [1999] 1 S.C.R. 330, at para. 42).

[51] Because the complainant was under the age of 16 years at the time of the alleged incidents, consent is not an issue: Section 150.1 of the Criminal Code.

[52] The Crown must prove beyond a reasonable doubt that the touching was done for a sexual purpose or in a sexual manner. This was described in *Ewanchuck* as being done "in the circumstances of a sexual nature, such that the sexual integrity of the victim is violated" (para 24).

[53] In *R. v. Chase*, [1987] 2 S.C.R. 293 the Court provided further instruction on this question of sexual or carnal context:

> 11 Applying these principles and the authorities cited, I would make the following observations. Sexual assault is an assault… which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one: "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?"… The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats, which may or may not be accompanied by force, will be relevant... The intent or purpose of the person committing the act, to the extent that this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence it may be a factor in determining whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances.
>
> [*Citations removed*]

> [54] The interaction of charges of sexual interference and sexual assault was recently considered by the Supreme Court of Canada in *R. v. R.V.*, 2021 SCC 10. Justice Moldaver, writing for the majority, was addressing this issue in the context of inconsistent jury verdicts. At paras 51 to 53 he said:
>
> > [51] Sections 151 , 152 and 271 of the *Criminal Code* use different terms to describe similar acts. Sexual interference under s. 151 requires proof of touching, and invitation to sexual touching under s. 152 requires proof that the accused counselled, invited or incited the complainant to touch. Sexual assault, for its part, is not defined under s. 271 . Instead, sexual assault is a s. 265(1) assault made applicable to sexual circumstances by s. 265(2) . A person commits a sexual assault by applying force intentionally to another person, directly or indirectly, in circumstances of a sexual nature (Criminal Code, s. 265(1) (a); *R. v. Chase*, [1987] 2 S.C.R. 293, at p. 302; *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, at para. 24).
>
> [52] The word "force" is commonly understood to mean physical strength, "violence, compulsion, or constraint exerted upon or against a person" (*R. v. Barton*, 2017 ABCA 216, 55 Alta. L.R. (6th) 1, at para. 202, aff'd 2019 SCC 33, citing Merriam-Webster Dictionary (online)). However, as a legal term of art, the element of force has been interpreted to include any form of touching (*R. v. Cuerrier*, [1998] 2 S.C.R. 371, at para. 10; *Ewanchuk*, at paras. 23-25; *R. v. J.A.*, 2011 SCC 28, [2011] 2 S.C.R. 440, at para. 23). Put simply, although the words "touch" or "touching" and "force" are distinct, in some circumstances, including those that apply here, they mean the same thing in law.

Analysis

[22] I will address the charges in the order by which the Crown made submissions.

Count 2

[23] As stated, the Crown must prove beyond a reasonable doubt the essential elements of a charge under s. 151 of the *Criminal Code*:

1. That R was under the age of 16 years at the time;
2. That DCS intentionally touched R;
3. That the touching was for a sexual purpose.

[24] In the spring of 2013, when R was 11 years old, her mother and DCS were displaced from the home they were renting due to water damage to the home. They moved into the Ramada Hotel in Dartmouth for approximately one month. R and DCS were alone in the hotel room one day. They were "play fighting" on the bed

with DCS trying to push R off the bed and R resisting. She was wearing a tee shirt and purple shorts over a bathing suit (the hotel had a pool). She told the police during her video statement and testified that at one point DCS put his hand on her vagina over her shorts. She says she froze and said "Oww". She then ran to the bathroom. She said that she was only 11 years old but she knew that this was wrong.

[25] In her statement she said that his hand rubbed her vagina over her clothes for about 20 seconds. She also told police that she remembers that she was wearing her purple shorts because she never wore them again – she placed them in a bag of clothes for donation when they returned to their home.

[26] In cross-examination by Mr. Linh, R said that she did not think that DCS putting his hand on her vagina over her clothes was an accident. She did not confront DCS about it at the time.

[27] In his video statement, DCS told police that he recalled the incident at the Ramada. He recalled R wearing shorts. He acknowledged that pushing her on her back, belly and leg made him feel good and it was for his own gratification. He denies putting his hand on her vagina or rubbing her vagina over her clothing. After revealing that he was a victim of sexual assault when he was a youth, DCS told the police about the events at the Ramada (pp. 165-169):

> A. …sex to me had become anything to make [his memory of his own sexual abuse]go away, if that makes any sense to you
>
> Q. Yeah, yeah, it does, yeah.
>
> A. Yeah, I just wanted it to go away. So it was … I would do anything to have sex, I guess almost anything, to make myself forget about [his own sexual assault abuse]. I'd feel good but at the same time…
>
> Q. Okay.
>
> A. …make myself forget about it
>
> Q. Yeah, yeah.
>
> A. Yeah. Because I wasn't gay, I wasn't …
>
> Q. Un-huh.
>
> A. … you know, and so that's how it started.
>
> …
>
> Q. Okay, okay, and so what kind of … that incident like with [R] in the hotel room at the Ramada …

A. Yeah.

Q. … tell me about that, like what was, you know, going on that kind of led you to that?

A. Well, we always wrestled on the bed…

Q. Yeah.

A. … and stuff and just I don't know, I just wanted to fell good I guess, and just …

Q. Uh-huh.

A. … you know …

Q. Uh-huh.

A. … push her off the bed.

Q. Okay.

A. Yeah.

Q. And so then you pushed her off the bed, do you remember like how …what happened after that like?

A. I was … I think I was trying to get her up and go to school and …

Q. Uh-huh.

A. … I was just pushing on her to … to get up to go to school, bugging her more than anything.

Q. Okay.

A. It's for my own gratification because it made me feel good I guess and …

Q. What made you feel good like?

A. Just touching on her. My girlfriend wasn't very sexual towards me at all.

Q. Okay.

A. Yeah.

Q. Okay. So when you … you say that you were touching on her …

A. Yeah.

Q. … like what do you mean by that?

A. Just pushing, pushing on her.

Q. Pushing.

A. Pushing on her …

Q. Okay.

A. … back or on her whatever, her belly and …

Q. Yeah.

A. … her leg.

Q. Her leg.

A. She said her pussy but it was more of her leg, I was pushing her like that, so.

Q. Okay.

A. Yeah.

Q. So what about her saying she remembers your hand like just kind of on top of her clothing like around …

A. No.

Q. … her vagina.

A. No, it wasn't underneath, no, but obviously …

Q. No, no, she never said it was underneath …

A. Yeah.

Q. …it was on …

A. Yeah.

Q. … top.

A. Yeah, no.

Q. Like …

A. I was … I was pushing on her just like that to get off the bed, right …

Q. Okay.

A. … and just yeah.

Q. Okay.

A. No, it wasn't … it wasn't like that like that.

Q. Uh-huh, uh-huh.

A. Yeah.

Q. And like do you remember rubbing her like …

A. No.

Q. … like moving your hand up and down?

A. No, no, no, I never did that, no.

Q. No.

A. Just like pushing, pushing.

Q. Okay.

A. Yeah …

Q. Do you remember…

A. … on her hips and like go on her hip and her …

Q. Okay.

A. … shoulder and …

Q. Okay.

A. Yeah.

Q. Do you remember what she was wearing that day?

A. I believe it was shorts I believe …

Q. Yeah.

A. … of some sort.

Q. You don't remember any …

A. No.

Q. … details?

A. No, I don't remember.

Q. Okay. So then tell me how it kind of …so from there like whenever that was happening, how did that make you feel like? You said it made you …

A. My guess it made me feel good I guess, yeah.

[28] I found the evidence of R, as to this event, to be credible and reliable. Although she was only 11 years old, her recall of what she was wearing and her reaction to the event by never again wearing the purple shorts provides support to the reliability of her recollection of the event. Her evidence during the police interview and on the witness stand was both internally and externally consistent and not altered in any way by cross-examination. Although she was soft-spoken in both the interview and in her testimony (although to a lesser extent), she answered all questions without hesitation.

[29] I am guided by the decision of the Supreme Court of Canada in *R. v. W. (D.)*, [1991] 1 S.C.R. 742. The instruction in considering evidence in such cases is:

1. If the evidence of the accused is believed, he must be acquitted;

2. If the evidence of the accused is not believed, but the evidence still raises or leaves a reasonable doubt, he must be acquitted; and,
3. Even if the evidence of the accused does not raise a reasonable doubt, he must be acquitted if a reasonable doubt is raised by other evidence that is accepted. In order to convict, the evidence that the court does accept must prove his guilt beyond a reasonable doubt.

[30] If DCS did touch R's vagina, I am left with a reasonable doubt that it was intentional. However, that does not conclude the matter. The Crown has proved each of the essential elements of s. 151 beyond a reasonable doubt. The complainant was under the age of 16 years at the time of the offence. The touching does not have to be of a sexual organ to satisfy the element of touching. Although he denies touching R's vagina, DCS admits that the touching of other parts of her body was intentional and for a sexual purpose: it made him "feel good" and it was for his gratification.

[31] I find DCS guilty of the charge under s. 151.

Count 3

[32] This is a charge under s. 152 of the *Criminal Code*. For DCS to be found guilty of this charge, the Crown must prove each of these essential elements beyond a reasonable doubt:

1. That R was under the age of 16 years at the time;
2. That DCS invited R to touch his penis;
3. That the touching that DCS invited was for a sexual purpose.

[33] R told the police during her interview that, when she was 15 years old, DCS requested that she masturbate him. These incidents began when he was driving her in his car and also occurred later in his bedroom at their home. These incidents continued after she turned 16 years old.

[34] When R was 14 years old, DCS began providing her with weed, cigarettes and alcohol. Sometimes he would offer it to her and sometimes she would ask him for it. He later began to suggest that, in return for providing her with these goods or driving her somewhere, she should show him her "pussy" or give him a "blow job". Each time she refused.

[35] At the time of providing her statement to police, she denied ever touching his penis. She testified that she subsequently gave an additional statement to police (not in evidence) in which she acknowledged that, in exchange for liquor or weed, she would touch him. She said this began when she was 15. The first time was in his car and he told her he would put on a condom so that she would not have to make direct contact with his penis. He told her he would buy her liquor if she followed through with masturbating him. He ejaculated into the condom and disposed of it out the car window. During these interactions he did not say anything specific to her.

[36] In cross-examination she stated that these masturbation events took place while she was attending […] High School. She said she could not recall if she performed any sexual acts prior to attending […] High School.

[37] Based on this answer, DCS argued that she could not have been 15 years old at the time.

[38] In his statement to police, DCS admitted to these events taking place but said that they had only started within the past year.

[39] The evidence of R's attendance at school is vague and unreliable. In cross-examination she acknowledged that she did not attend school regularly. She stated that she stopped attending school when she was in grade ten (but met twice per week with a teacher). There is no clear evidence as to how old she was when she began to attend […] High School or what grade she was in when she began attending there.

[40] I am left with a reasonable doubt that any of these events occurred when she was under the age of 16 years.

[41] I find DCS not guilty of the charge in Count 3.

Count 4

[42] This is a charge under s. 153(1)(a) of the *Criminal Code*. For DCS to be found guilty of this charge the Crown must prove each of these essential elements beyond a reasonable doubt:

1. That R was a "young person" at the time. A "young person" is someone who is 16 years old or more but less than 18 years old;
2. That DCS touched R;

3. That the touching was for a sexual purpose;
4. That DCS was in a position of trust or authority towards R or in a relationship with R that was exploitive of R or that R was in a relationship of dependency with DCS.

[43] R says that, when she was 16 and 17 years old, DCS would often touch her butt and would sometimes touch her breasts over her clothes. This would occur at home and in public places, for example, while shopping. She says that he would walk past her in a store and brush the back of his hand against her butt. Other times he would brush the front of his body across the back of hers by passing behind her much closer than was needed. At home he would use the palm of his hand and actually squeeze her butt.

[44] R described an incident occurring just before Christmas, 2019 when DCS came into her bedroom and placed his hands on her upper thighs and tugged at her pants while asking her to take her pants off and show him her "pussy" and in return he would go to the liquor store and get whatever she wanted. She pushed him away.

[45] R also described incidents during which she would go into DCS's bedroom and he would "dry hump" her. She would lay on her back on his bed with her clothes on. He would lie on top of her and rub his groin against hers. She says he would take his pyjama pants off. She wore shorts and sweatpants to make sure his penis did not touch her.

[46] In his statement to police, DCS acknowledges grabbing R's bum and squeezing it if nobody was around. He also admitted the incident where he went into her bedroom and put his hands on her pants and asked her to pull them down. He recalled this occurred about two months before the statement. He also admitted "dry humping" in his bed, although he says both of them kept their clothes on. He said this occurred within the last couple of months before the statement.

[47] The Crown has proved elements 1, 2, and 3 beyond a reasonable doubt. The remaining question is whether DCS was in a position of trust or authority towards R.

Law

[48] Consent is not a defence to a charge of sexual exploitation: *R. v. C.K.K.*, 2020 ABCA 145.

[49] It is the nature of the relationship between the young person and the accused, rather than their status in relation to each other, that invokes s. 153. The age difference between them, the evolution of their relationship, and the status of the accused in relation to the young person may be relevant factors. The Crown does not have to prove that the accused actually exploited their privileged position with respect to the young person: *R. v. Audet*, [1996] 2 S.C.R. 171.

[50] In *R. v. R.T.*, 2017 ONSC 2625, the Court considered a case where the accused had a sexual relationship with the complainant, Z.M. At the time, he was 54 years old and she was 16. He had been in a relationship with the complainant's mother and had lived with the family for about four years. The sexual activity commenced after he moved out of the house, having split up with Z.M.'s mother. Justice Pomerance provided the following summary of the law:

> *a. Position of trust: the case law*
>
> 26 In *Audet*, La Forest J. interpreted the word "trust" in accordance with its ordinary meaning: "[c]onfidence in or reliance on some quality or attribute of a person or thing, or the truth of a statement." An adult occupies a position of trust towards a young person where the nature of their relationship "is such that it creates an opportunity for all of the persuasive and influencing factors which adults hold over children and young persons to come into play, and the child or young person is particularly vulnerable to the sway of these factors".
>
> 27 As with most issues, this determination is fact-specific and requires a judge to consider all of the facts relevant to the relationship in issue. These include, "[t]he age difference between the accused and the young person, the evolution of their relationship, and above all the status of the accused in relation to the young person".
>
> 28 Some relationships will result in a presumption of trust. This may occur when there is an inherent "power dependency" and where the relationship exists because of the accused's status. For example, teacher-student relationships are presumptive trust relationships. Conversely, a relationship between a 17-year-old and the common-law spouse of her mother who shares the family home is not a presumptive trust relationship. [*R. v. J. (R.H.)* [1993 CarswellBC 516 (B.C. C.A.)]
>
> 29 The courts have identified various factors relevant to the identification of trust relationships. In *R. v. Aird*, the Ontario Court of Appeal referred to "the degree of control, influence or persuasiveness exercised by the accused over the young person" and "the expectations of the parties affected, including the accused, the young person and the young person's parents." In that case, Laskin J.A. affirmed the trial judge's finding of a trust relationship between a tutor and his student, considering the young person's naiveté and lack of sexual experience; her and her parents' trust in and reliance on the accused for his help and guidance; and the tutor-student relationship, which enabled the accused to "use his status and the persuasive

and influencing factors he held in their relationship to effectively groom her into a sexual relationship." [2013 ONCA 447, 307 O.A.C. 183 (Ont. C.A.)]

30 In *R. v. E. (D.),* Hill J. found a trust relationship between a young person and her second cousin, based on the nine-year age difference; the confidence and faith that the young person and her mother had in the accused that he would not harm or exploit her; the fact that the mother would not have consented to her daughter becoming involved in a sexual relationship with the accused; the young person's immaturity; the evolution of the relationship; the fact that the accused was aware that the young person was having difficulty with her parents; he filled the role of "significant male adult figure" in the young person's life; he provided her rides, cigarettes, and alcohol; he acted as a confidant; and he established his home as an alternative to her mother's. [[2009] O.J. No. 1909 (Ont. S.C.J.)]

31 In *R. v. Beckers,* C. W. Hourigan J. relied on similar factors. The accused was 34 years older than the complainant; the complainant was vulnerable and experiencing difficulties at home; the accused exploited those difficulties by denigrating the complainant's parents; the accused provided the complainant with a place to stay and a place where he could do things he couldn't do at home (i.e. smoke marijuana and cigarettes); he provided the complainant with gifts and benefits, rides, and cab fare; he provided those benefits in exchange for sexual favours; he considered himself to be a mentor, big brother, father figure, and teacher to the complainant; he sexualized the complainant; and he continued his relationship with the complainant despite the requests of the parents that the relationship end. [2012 ONSC 6709 (Ont. S.C.J.)] This finding was upheld by the Court of Appeal. [*R. v. B. (R.),* 2014 ONCA 489 (Ont. C.A.)]

32 In *R. v. Frost*, the court held that the accused was in a position of trust towards the complainant who had been hired as a family helper and caretaker; who did homework, ate meals and slept over at the accused's house; and who was essentially a part of the family unit. [2015 MBQB 96, 318 Man. R. (2d) 67 (Man. Q.B.)] In *R. v. Howell*, a "spiritual healer" was held to be in a position of trust towards the complainant who, along with her family, believed he could help and protect her and who followed his instructions on the belief that to refuse would bring spiritual consequences. [2012 ONSC 846 (Ont. S.C.J.)]. A "natural therapy" practitioner was found to be in a position of trust in *R. v. B. (N.P.M.).* [2007 BCPC 466 (B.C. Prov. Ct.)] In other cases, circumstances have fallen short of establishing a trust relationship. For example, in *R. v. Poncelet* the court considered the "working student" relationship between a 15-year-old and a 40-year-old horse trainer that progressed into a sexual relationship. In that case, Smith J. highlighted the importance of considering the complainant's vulnerability. [2008 BCSC 202 (B.C. S.C.)] The question is whether there is sufficient criteria to establish an inherent power imbalance in the relationship that caused the young person to be in a position of vulnerability and weakness. Something more than age difference must exist in order to establish a trust relationship. In that case, the court found that there was insufficient evidence of a trust relationship: the evolution of the emotional bond between the accused and the young person was intricately wound up with their

mutual admiration and respect; the complainant was a mature and responsible individual; and there was no indicia of grooming or manipulation.

34 In *R. v. Wright* the court considered a sexual relationship between a horse rider and trainer who sold a horse to a young person and provided boarding for that horse. [2013 ONSC 3258 (Ont. S.C.J.)] The court found that there was no trust relationship: there was no evidence of grooming or of the accused providing benefits or alcohol or drugs to the young person; there was no evidence that the accused exercised any ongoing control over the young person; and the young person was mature, intelligent, independent, sophisticated, and sexually experienced. The court did not consider the complainant particularly vulnerable.

35 In *R. v. Underwood*, the court found that the accused was not in a position of trust towards the complainant, whom he had hired to babysit his daughters — there was no inherent power imbalance in their relationship; the complainant was not vulnerable; and there were no indicia of grooming. [2015 MBQB 66, 316 Man. R. (2d) 299 (Man. Q.B.)] In *R. v. E. (T.I.)* the court found that the accused was not in a position of trust towards the complainant, despite being considered an authority on First Nations practices in the First Nations community and despite being admired and considered a role model by the complainants, as the nature of the relationship was that of friendship and nothing more. [2012 MBQB 239, 283 Man. R. (2d) 200 (Man. Q.B.)] Finally, in *R. v. Caskenette* the court found that evidence that the accused was the complainant's boss at an arcade and was physically bigger than the complainant was insufficient to establish the existence of a trust relationship. [1993 CarswellBC 1141 (B.C. C.A.)]

b. Summary of factors

36 On the basis of the above, the following factors are relevant to the determination of whether the accused is in a position of trust:

> • The age difference between the accused and the young person — the higher the age difference, the more likely it is that the relationship is a trust relationship.
>
> • The status of the accused — the more formal the status (teacher, father figure, big brother, mentor, etc.), the more likely it is that the relationship is a trust relationship.
>
> • The degree of control, influence or persuasiveness exercised by the accused over the young person.
>
> • The expectations of the parties affected, including the accused, the young person and the young person's parents.
>
> • The vulnerability of the young person — i.e. his or her level of intelligence, sophistication, independence, and maturity and relationship with his or her parents.
>
> • Any grooming, pressuring, or incentivising behaviour on the part of the accused — i.e. denigrating the young person's parents; engaging in sexual

> discussions and sexualizing the young person; and offering benefits, particularly things the young person cannot get or do at home (drugs, alcohol, etc.)

c. The duration of trust

37 How long do relationships of trust last? Authority and dependency may be situation specific. A person who has authority as a teacher may lose that authority when the student graduates from the class. A relationship of dependency may end when the adult is no longer providing for the young person. Trust is different. Trust speaks to a subjective bond between the adult and the young person. It attaches to the person, him or herself, rather than his/her position or role. Whereas authority and dependency are defined by external circumstances, trust has an internal component. It represents an emotional attachment; a faith that the adult would not act contrary to the child's interests. As it was put by Blair J. in *R. v. S. (P.),*

> I take a "position of trust" to be somewhat different than a "position of authority". The latter invokes notions of power and the ability to hold in one's hands the future or destiny of the person who is the object of the exercise of the authority: see, *R. v. Kyle* (1991), 68 C.C.C. (3d) 286 (Ont. C.A.). A position of trust may, but need not necessarily, incorporate those characteristics. It is founded on notions of safety and confidence and reliability that the special nature of the relationship will not be breached. [[1993] O.J. No. 704 (Ont. Gen. Div.)]

38 The nature of trust suggests that it may have a certain persistence. Because it attaches to the person, rather than the relationship, it may continue even after the terms of the relationship have changed. This is a determination to be made on a case-by-case basis.

Application to this case

[51] The most compelling evidence that DCS was in a position of trust towards R is that her mother left her alone with DCS from the time she was 11 years old and relied on DCS to act as a parent towards R.

[52] In his statement to police, DCS acknowledged that R referred to him as her stepdad when describing him to friends. He also stated that R confided in him regarding personal issues such as her relationship with her boyfriend. DCS states that he counseled R to stay in school and tried to be a positive influence in her life and further states that he took care of her and cared for her.

[53] R told police, in her statement, that DCS was like a dad to her. She testified that she described him to her friends as her stepdad.

[54] I note the age difference between DCS and R was substantial. DCS acted as and recognized himself as her stepfather. He had a significant degree of control, influence or persuasiveness over R. The expectations of the parties affected, including DCS, R and R's mother strongly indicate a position of trust.

[55] The vulnerability of R - her level of intelligence, sophistication, independence, maturity, and relationship with her mother all support a finding of a trust relationship. The evidence clearly shows acts by DCS of grooming, pressuring, or incentivising behaviour. He acknowledged engaging in sexual discussions and sexualizing R, as well as offering her benefits (particularly things R could not obtain on her own) such as cigarettes, alcohol and drugs.

[56] I find that the evidence establishes beyond a reasonable doubt that DCS was in a position trust towards R.

[57] The Crown has proved all of the essential elements of s. 153(1)(a) of the *Criminal Code*. I find DCS guilty on Count 4.

Count 1

[58] For DCS to be found guilty of sexual assault, the Crown must prove each of these essential elements beyond a reasonable doubt:

1. DCS intentionally applied force to R;
2. That R did not consent to the force DCS applied;
3. That DCS knew that R did not consent to the force that he intentionally applied;
4. That the force that DCS intentionally applied took place in circumstances of a sexual nature.

[59] The Crown alleges that the events giving rise to this charge span the time both prior to and after R turned 16 years old. With regard to those events that occurred prior to R turning 16 years old, consent is not an element of the offence pursuant to s. 150.1 of the *Criminal Code*.

[60] With regard to the events that occurred after R turned 16, the issue of consent is vitiated by my finding that DCS induced R to engage in the activities by abusing a position of trust pursuant to s. 273.1(2)(c) of the *Code* for the reasons expressed above under my analysis of Count 4.

[61] My findings regarding the event of sexual touching at the Ramada Hotel, when R was 11 years old, which grounded finding DCS guilty of Count 2 also satisfies all of the elements of the offence under s. 271.

[62] The occasions that DCS intentionally grabbed R's butt and squeezed, as previously described, have also been proved by the Crown beyond a reasonable doubt to meet all of the elements of s. 271.

[63] The occasion when DCS went into R's room and grabbed her pants and asked her to pull them down to show him her "pussy" has been proved beyond a reasonable doubt to satisfy all the elements of s. 271.

[64] The acts of "dry humping" previously described have been proved by the Crown beyond a reasonable doubt to satisfy all of the elements of s. 271.

[65] I am further satisfied that the events acknowledged by DCS of R masturbating him in his car and in his bedroom have been proved by the Crown beyond a reasonable doubt to satisfy all of the elements of s. 271.

[66] I find DCS guilty of Count 1.

[67] In summary, I find DCS guilty of Counts 1, 2 and 4, and not guilty of Count 3 of the Indictment.

Norton, J.