

SUPREME COURT OF NOVA SCOTIA

Citation: *R v. Letcher*, 2026 NSSC 44

Date: 20260204

Docket: Tru No. 527853

Registry: Truro

His Majesty the King

v.

Lorna Letcher

DECISION

Restriction on Publication: s. 486.4 *Criminal Code*

Judge: The Honourable Justice Jeffrey Hunt
Heard: November 5 and 6, 2025 in Truro, Nova Scotia
Oral Decision: February 4, 2026
Counsel: Andy Melvin, Solicitor for the Crown
Stan MacDonald, K.C., Solicitor for the Defendant

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 162.1, 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

(iii) [Repealed 2014, c. 25, s. 22(2).]

(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).

By the Court (orally):

Introduction

[1] Lorna Letcher is currently facing three counts of criminal sexual behavior involving M.M. The particulars of these will be set out in more detail shortly.

[2] Ms. Letcher was initially charged with six offences, these being three counts of sexual assault and three of sexual touching of a young person to whom she stood in a position of trust. At the conclusion of the evidence in this matter, the Crown invited the Court to enter not guilty findings with respect to the three sexual assault allegations. This left the following three counts for determination:

BETWEEN January 1, 2005 and December 31, 2005, at or near Valley, Nova Scotia being a person in position of trust towards M.M., a young person, did for sexual purpose touch directly to wit: the vagina and breasts of M.M., contrary to section 153(1)(a) of the *Criminal Code*;

AND FURTHERMORE, between January 1, 2006 and December 31, 2006 at or near Valley, Nova Scotia being a person in a position of trust towards M.M., a young person, did for sexual purpose touch directly to wit: the vagina and breasts of M.M., contrary to section 153(1)(a) of the *Criminal Code*;

AND FURTHERMORE, between January 1, 2007 and September 4, 2007 at or near Valley, Nova Scotia and being a person in a position of trust towards M.M., a young person, did for sexual purpose touch directly to wit: the breasts of M.M., contrary to section 153(1)(a) of the *Criminal Code*.

[3] These charges arise out of an acknowledged sexual relationship between Lorna Letcher and M.M. The allegations date to the period January 2005 -

September 2007 when M.M. would have been 15 - 17 years old and the accused an adult some 32 years her senior.

[4] As a legal matter, lack of factual consent is not an element of the three remaining criminal counts.

[5] The core question that will determine the disposition of all remaining allegations is whether Lorna Letcher was, at the relevant time, in a position of trust with respect to M.M. If this has been proven to the required criminal standard, then Lorna Letcher stands to be convicted. Otherwise, acquittals will follow.

[6] I will assess all the evidence that has been put before the Court with respect to the nature, history, evolution and circumstances of the relationship between the two parties.

[7] It has to be remembered that this matter will not be determined on the basis of whether there were moral or ethical lines crossed by the accused. The issue is whether, as a matter of law, the Crown has proven beyond a reasonable doubt that Lorna Letcher was in a position of trust with respect to M.M. during the relevant time period when sexual contact occurred.

Core Legal Principles

[8] In terms of the applicable legal principles, the fundamental protection in every criminal trial is the presumption of innocence. This *Charter* protected right is the foundation of our criminal justice system. It has to be appreciated that this is not a slogan to be quoted and then forgotten. It must remain central to the entire analysis to be conducted by the Court.

[9] Working together with this presumption of innocence is the standard of proof against which the Crown evidence must be measured. To secure a conviction in a criminal case, the Crown must establish each essential element of the offence to the point of proof beyond a reasonable doubt.

[10] This standard has rightly been called an exacting one. It is a standard far higher than the civil threshold of proof, being a balance of probabilities. The law recognizes different standards of proof depending on the nature of the proceeding. A warrant may be secured on a particular standard or a lawsuit successfully litigated on another. The standard of proof necessary to secure a criminal conviction towers above those other lesser standards.

[11] The Nova Scotia Court of Appeal and Supreme Court of Canada have provided clear direction on the issue of what is meant by proof beyond a reasonable doubt. They have instructed as follows:

- A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.
- Even if it is believed the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances, the Court must give the benefit of the doubt to the accused and acquit, because the Crown has failed to prove the guilt of the accused beyond a reasonable doubt.
- On the other hand, it must be remembered that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.
- In short, if based on the evidence before the Court, the Court is sure that the accused committed the offence, then it ought to convict because this demonstrates that the Court is satisfied of the guilt of the accused beyond a reasonable doubt.
- It has to be remembered that the burden of proof never shifts to the defendant. This is irrespective of whether the defendant gives evidence.
- In this case the accused did not call evidence. Whether a defendant testifies or not, at no time does the burden of proof shift to them. The

resolution of any criminal case does not turn on the Court picking which version of the facts it prefers or finds more believable. That would erroneously displace the burden onto the accused and would represent a fundamental misapprehension of the Court's proper function. Neither does an accused have an obligation to prove a motive to fabricate on the part of the complainant.

[12] On the issue of assessing the evidence of witnesses, the Court is aware of many cases which provide commentary with respect to the analysis of witness testimony. What we sometimes refer to as the "credibility" of a witness is comprised of two distinct components of creditworthiness:

- Honesty of recollection; and,
- Reliability of recollection.

[13] Honesty speaks to the sincerity and candour of a witness's evidence while reliability relates more to such factors as the witness's individual perception, memory, and clarity. Both sides of the equation – honesty and reliability – impact the credit that can be afforded to testimony. A judge may accept all, none, or some of a witness's evidence depending on the findings. The judge may apply different weight to different portions of the evidence which it does choose to accept.

[14] While the Crown always has the burden of proving the essential elements of the offences beyond a reasonable doubt, it is not required to prove every single piece of the evidence beyond a reasonable doubt: see *R. v. J.E.W.*, 2013 NSCA 19.

[15] A foundation for reasonable doubt can be found in any witness's testimony. So too, a finding of guilt may be safely grounded on the evidence of a single witness if, of course, it is found sufficiently credible and persuasive to meet the exacting burden of proof.

[16] In assessing the credibility of testimony, I am aware of the factors which have been pointed to by courts as helpful to this process. On this point, I have found *R. v. Farrar*, 2019 NSSC 46 to be instructive.

[17] In assessing the reliability and credibility of each witness's evidence I have considered such matters as discrepancies or inconsistencies of the testimony, both internally and in comparison with other evidence on the same issue, any interest the party may have in the outcome (but not their status in the proceeding), the apparent memory capacity of the witness, the ability of the witness to recount a reasonable and logical account as reflected through direct and cross-examination. I am permitted to assess witness demeanour, but with substantial caution as guided by caselaw.

[18] In every respect it is my obligation to ensure that these core principles inform and underpin the entire analysis to follow.

Facts

[19] M.M was born and brought up in Colchester County, Nova Scotia. Her date of birth is [...]. Until she went away to university, she lived with her parents in the community of [...], Nova Scotia. She attended local schools and when she was approximately 10 years old joined a local beginner band that was made up of young people from different schools in the area which fed into the central band program. She eventually went on to junior band and later the CEC school band. She provided evidence to the Court as to her evolving association with the youth band system, and eventually community bands, throughout her schooling.

[20] The accused was a music instructor in the community. She was employed by the Truro District School Bands Auxiliary which supported the operation of the youth bands. Ms. Letcher was the immediate band director and instructor for bands in which the complainant was a member in grades 5, 6 and 12. After grades 5 and 6, M.M. remained involved in band activities where Ms. Letcher was the leader. For instance, she attended band practices and offered assistance or tutoring type support to less proficient students.

[21] In 2007, when M.M. was in Grade 12, Lorna Letcher was the director of the Brass Ensemble in which M.M. was a member. This was a mixed age group. There were other band related activities that brought the two into contact regularly over the period in question.

[22] Given the centrality of music and band in M.M' s life, the evidence shows that Lorna Letcher was an ongoing presence in her life as opposed to someone who appeared at age 10 or 11 before dropping out and reappearing when she was 15. Ms. Letcher was a central adult leader in the local music world that was important to M.M.

[23] The complainant was instructed by the accused in what was described as beginner band and then junior band in grades 5 and 6. The evidence was that band practices took place after school hours at the local high school.

[24] M.M. gave evidence on band related matters including how typical band practices worked, the evolution of her membership in the youth bands and the role of Lorna Letcher as music leader. M.M. explained that with beginner band there were often one or two other adults or parents around as band coordinators. She explained that they appeared to be doing general supervision as there could a lot of children present.

[25] She described how her contact with Lorna Letcher evolved as she progressed through the youth bands and eventually into the [...] Band, a mixed age community band.

[26] She describes at first being intimidated by Lorna Letcher but as time went on her feelings evolved to the point where she described having what she termed a crush on Lorna Letcher during Junior High.

[27] M.M. testified that she continued to see Lorna Letcher even when Letcher was not her direct band leader because M.M. was attending the band practices where Letcher was leader in order to assist or provide tutoring type help to more inexperienced players.

[28] Additionally, M.M. was hired to work in a number of summer band camps operated by the Band Auxiliary for school children. These were described as camps which took place at the end of the summer. Ms. Letcher was a senior instructor in these camps with the complainant being a more junior tutor or helper. She described herself as reporting to Lorna Letcher in her position with the band camps. She did receive some pay.

[29] Additionally, during part of the period in question, Ms. Letcher would be carrying out her music related duties within the high school building. While M.M. was a student there, the accused organized and maintained a music library within

the school. M.M. testified as to the two of them meeting within this space with their interaction eventually progressing to physical contact.

[30] Next to the music library was another small space which was described as a practice room for students and their instruments. As to this space, M.M. testified that Ms. Letcher "...worked out of [it] all the time". It was noted that the music library was jokingly referred to as Letcher's "office".

[31] There was also evidence about the high school having a separate official music teacher and school music director. I have assessed all of this and what was clearly a nuanced and specialized role occupied by Ms. Letcher. She was not a school board employee or paid holder of a teacher's certificate. Within the relevant time however she was present within the school and had a scope of authority over a small music space within the school. I accept the evidence of M.M. that reflected her awareness that Ms. Letcher, for a time, had a key to the music area in order to allow her access for the work she was doing in the school.

[32] To be clear, Ms. Letcher was not a teacher in the conventional sense of a public school employed staff member. She was, however, an adult leader within the youth band system.

[33] Returning to her personal interactions with Ms. Letcher, M.M. described an evolving situation where she first developed what she described as a crush on

Lorna Letcher. She identified the time frame for this as being by the end of Grade 7. This continued through the process of her eventually making a decision to come out to Lorna Letcher as gay. It was after this point that the relationship evolved into a physical one with sexual touching, as will be discussed.

[34] Counsel asked M.M. many questions about the relationship between herself and Lorna Letcher. As noted above, she described being at first intimidated by her but eventually coming to see Ms. Letcher as funny, kind and smart. They shared an interest in music. M.M. began to idolize Lorna Letcher. This is entirely clear from the evidence at trial.

[35] Her evidence was that the year she turned 15, and as noted this was after she had come out to Lorna Letcher as gay, the relationship became physical. She described this as making out, kissing and sexual touching over and under clothing.

[36] There was, as would be expected, extensive questioning by both Crown and defence with respect to issues of influence or control as between Lorna Letcher and M.M. I have assessed all the evidence as it pertained to the role and status of Lorna Letcher in the life of M.M.

[37] To take an example, Crown had M.M. describe how she viewed Ms. Letcher in and around the times she was engaged with the band camps. The exchange was as follows:

Q. Okay, what influence, if any, did Ms. Letcher have over you during this time period for the band camps?

A. For the band camps, as much as she did in everyday life, like she had a huge influence of me .. over me, like if she told me to do something, I would do it. I was pretty unquestioning of her.

Q. Okay.

A. I thought of her as the authority figure even though I had this crush on her, it was still like, I'm going to do what she says.

[38] In other questioning the following was said by her:

A. Yes. So, going into grade 9 we had .. as we had just talked a little bit about, like, there was a boy at band camp and she was like oh you don't need boys and that kind of made me think oh she must know I'm gay, like I hadn't come out to her yet. That's going into grade 10. And the in the fall of grade 10, I am 15 ...

Q. Uh-hmm.

A. ... and I come out to her, I think it's before one of her rehearsals ...

Q. Okay.

A. ... and I just had kind of blurted it. I had been .. contemplated coming out to her but I wasn't fully certain I wanted to ...

Q. Okay.

A. ... and then our dynamic very quickly changed like after I had come out to her as gay. We started talking all the time like on the phone and I would see her at school. She started coming to the school to see me during the day and like very shortly after I came out she started making comments about oh if I was 30 years younger or you were of age, like we could be together.

[39] Her account of various milestones in the relationship included exchanges such as the following:

Q. Okay, so you were sharing secrets with her? Okay. What was the next point of evolution in your relationship would you say?

A. I would say her .. like her telling me that like if I were 30 years younger, and then being like, oh but like I don't do that, some people do that, but I don't do that.

Q. Okay. This is what Ms. Letcher ...

A. This is what she said ...

Q. ... told you?

A. ... to me, yes.

Q. Okay.

A. And so, I was like confused because she's like saying it, but then kind of immediately taking it back, but then being like but what if, like ...

Q. Okay.

A. ... kind of testing the waters, I think.

Q. Okay.

A. Is definitely how I see it. And then after that, would be her telling me that she loved me too much, and I still didn't know in what way she was talking about. That was another huge turning point.

Q. Okay, when was that approximately?

A. That was in January of 2005.

Q. Okay. And you're still 15 at this point?

A. Yeah.

Q. Okay.

A. I had turned 15 in the previous September.

Q. Okay, so what did that change in your relationship?

A. I was still very naive, still very oblivious to everything .. everything relationship wise, with anybody and I was like I don't know what she means by that, like she's saying she loves me too much and I'm confused by it because I'm thinking oh she can't possibly mean she's in love with me, like I just don't think that's maybe possible, like I'm hoping, but I 1 don't think it's really likely.

Q. Okay.

A. And then very shortly after that, like a few days after that she had come into CEC during the day, she didn't have classes during the day .. like band classes during the day or anything. She just came during my lunch hour to see me, and I met her in the music library, and that is very much when things took a pivotal turn ...

Q. Okay.

A. ... where things became physical.

Q. And again, I apologize for the intrusiveness of these questions, but what did that look like physically?

A. So, initially she kissed me ...

Q. Uh-hmm.

A. ... like open mouth on the lips. And that was kind of it that day, like I think she may have .. like very early on in the day she had her hands in my hoodie pocket and like rubbed them up my abdomen and like up to my chest, but I don't recall there being any like penetration or anything those first couple of days ...

Q. Okay.

A. ... that things became physical.

Q. Okay, so what about after the first couple of days?

A. So, within those couple of days, there was a day that I met her, I think again on my lunch hour or I was skipping class, I can't recall which. I met her in the music library, she shut the door and ...

....

A. Okay, okay, sorry. So, things became physical, she had held me and she kissed me and it was one of those early days where she told me like every time I put my hands on you this is a felony and so I was like oh shit, this is .. like things are real now. And she told .. like she told me she loved me and like and I finally knew in what way she was talking about and then within those first probably weeks, she undid my pants and put her hand down the front of my pants and manually penetrated my vagina.

Q. Okay.

A. And like felt my chest and such, and that would happen, you know, not every time we saw each other, but fairly frequently.

Q. Okay. What would you say the next development in your relationship was?

A. I would say considering things a relationship were maybe the next step.

Q. Okay.

A. Like ...

Q. And what did that look like? Like what did that mean to you?

A. Well like at that .. you know, doing more physically together and like giving each other gifts, telling each .. continuing to tell each other secrets and that kind of thing. And she became like kind of like as I indicated in my journal, like there was the same boy that she was jealous of and became a little bit more possessive of me and like my body and my time.

Q. Okay.

A. And that existed for that school year, and then as we discussed in the summer it died down a little bit, just because we couldn't see each other as often and then it started again in the .. in .. when I started grade 11.

Q. The year you were .. the summer you were 15?

A. Yeah. The summer I was 15, and then I turned 16 right at the beginning of grade 11 and things became more physical then, as well.

Q. Okay. Where would you meet with Ms. Letcher for this physicality?

Was it all at the music library or?

A. At the beginning, yes.

Q. Okay.

A. But then she got scared that people would find out or walk in, which did happen, and then we started going to her house.

[40] I could go on with excerpts. Proceeding through every element of the questioning would tend to make this a very long decision, and I intend to limit this. I note that I am aware, and have considered, a further excerpt where M.M. was questioned as to whether there were examples of the accused attempting to persuade or manipulate her. She stated that she did not recall specific instances of the accused attempting to change her mind or manipulate her directly on matters.

[41] There was evidence as to the actual sexual contact. M.M. testified as to being smuggled into the Letcher home and how this was carried out. I am aware there could be reasons for the accused and M.M. to take steps to hide their relationship even apart from the existence of a position of trust relationship.

[42] I have regarded what M.M. has attributed to Ms. Letcher as comments around these issues and others. I accept the accuracy of the comments M.M. relates

to Lorna Letcher throughout. I find the complainant's evidence to have been credible, logical and believable. I accept its accuracy and reliability.

[43] As we know from other cases however it is not a matter of simply accepting the hindsight view of a complainant now as to whether a position of trust or authority existed, or was abused, in the period of the alleged offences. This is to be assessed on an objective basis and in light of all the circumstances outlined in caselaw.

[44] Both Crown and defence explored with M.M. issues touching on the scope of her independent action, thinking, decision making, and the degree to which the accused did, or did not, exercise power, control or influence over the person, actions, thinking or decisions of M.M.

[45] The defence effectively made the point through questioning that Ms. Letcher was not actively attempting to cut M.M off from all other influences in her life. I am aware of the evidence given by M.M. with respect to comments made by Lorna Letcher about her not needing boys, or a boy, but I do not take this as a serious effort to isolate her, in the manner discussed in some caselaw.

[46] M.M. did have a seemingly small but existing friend network, largely of a musical circle. She maintained good grades and made her own final decision about

her university plans. She maintained a part-time job as a cashier at a store for a period of time.

[47] Obviously, the critical time period here covers a number of years.

Relationships seldom remain perfectly static over extended periods such as this. I will return to these issues of the status of Lorna Letcher in the life of M.M, and the fundamental nature of their relationship, following a discussion of the law as it pertains to the charged offences.

Section 153 and Position of Trust

[48] The *Criminal Code* does not define “position of trust”. The Nova Scotia Court of Appeal in *R. v. L.R.L.*, 2000 NSCA 94 had the following to say with respect to the interpretation of the term:

67 ... In the majority decision [in *R. v. Audet*, [1996] 2 SCR 171] Justice LaForest determined at p. 188 "... that the Crown does not have to establish that the accused actually abused his or her position towards or relationship with the young person in order to obtain the young person's consent to the alleged sexual activities." (para. 23). The purpose of s. 153 is to ensure that persons in positions of trust do not engage in sexual activities with young persons, even though there is apparent consent. To obtain a conviction, the Crown must prove beyond a reasonable doubt: (1) that the complainant is a young person within the meaning of s. 153(2); (2) that the accused engaged in one of the activities referred to in s. 153(1) ; and (3) that when the acts in question were committed, the accused was in a position of trust towards the young person.

[49] The Supreme Court of Canada in *R. v. Audet, supra.*, went on to list three factors which they stated would, in many cases, guide the analysis of when an

adult's position relative to a young person had assumed the nature of a position of trust.

[50] These broad considerations were said to be (1) the age difference between the accused and the young person; (2) the evolution of the relationship; and (3) “above all” the status of the accused: see *R. v. Audet, supra.*, para 38. Other recognized factors include the degree of control, influence or persuasiveness available to the accused, and the expectations of the parties involved, including the accused, the young person, their parents or guardians: see *R. v. Aird*, 2013 ONCA 447, para 28.

[51] Justice Campbell of this Court has very recently conducted a thorough review of the law pertaining to the section 153 offence and relevant decisions interpreting and applying the language around position of trust or authority.

[52] I could not do better than to adopt his analysis from *R v I.J.S.*, 2025 NSSC 201. This is a lengthy excerpt but ultimately it encapsulates a great deal of law that is directly relevant to the process today:

36 The phrase "position of trust" arises in the context of the second charge as well. That is sexual exploitation under s. 153(1)(a) of the Criminal Code. That makes it an offence for a person who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a position of dependency or who is in an exploitative relationship with the young person, to sexually touch that young person for the purpose of sexual gratification. Consent is not a defence because the absence of consent is not an element of the offence. If the sexual touching took place the issue is the age of the complainant at the time and whether the accused was in a position of trust or

authority, or a person with whom the complainant was in a relationship of dependency or a person who is in an exploitative relationship with the young person.

....

Trust or Authority

40 The phrase "position of trust or authority" is significant for all the charges faced by I.J.S.

R. v. Audet

41 It is an important phrase. The *Criminal Code* does not define what is meant by a position of trust or a position of authority. The Supreme Court of Canada in *R. v. Audet* [1996] 2 S.C.R. 171, [1996] S.C.J. No. 61, addressed the issue and the Court's approach to the definition allowed for a nuanced consideration of the relationship. The Court held that the exploitation of the position of trust or authority is not an element of the offence of sexual exploitation. The Court noted that Parliament wanted to provide greater protection to young persons. It chose harsher means by criminalizing the activity itself, regardless of whether it is consensual provided that it involves a person who is in a position or relationship referred to in s. 153(1) with respect to the young person.

42 The Court cited with approval Justice Woolridge in *R. v. Hann* (No. 2) (1990), 86 Nfld. & P.E.I.R. 33,

The implication from the wording of Section 153 is that notwithstanding the consent, desire or wishes of the young person, it is the adult in the position of trust who has the responsibility to decline having any sexual contact whatsoever with that young person. (para. 16)

43 If an adult is in a position of trust or authority the obligation is on the adult to say "No" to any sexual contact. The apparent consent of the young person, even if that consent appears to be unequivocal, is immaterial. Adults in a position of trust or authority cannot have sexual contact with the 16 or 17 year old young people in respect of whom they hold those positions. There is no requirement that the Crown prove that the accused abused the position of trust or authority. It is enough that the position of trust or authority is proven to have existed. Any definition of a "position of trust" must then relate to the relationship and not the misuse of the relationship in obtaining apparent consent.

44 La Forest J. for the majority in *Audet* drew the distinction between positions of authority and positions of trust. A position of authority suggests that the adult has some power of command over the young person and can hold the young person's future or destiny in their hands. A position of trust was acknowledged to be perhaps even more difficult to precisely define. Trust means confidence in or reliance on some quality or attribute of a person. A position of trust is one in which the person trusts in or relies on the other.

I would add that the definition of the words used by Parliament, like the determination in each case of the nature of the relationship between the young person and the accused, must take into account the purpose and objective pursued by Parliament of protecting the interests of young persons who, due to the nature of their relationships with certain persons, are in a position of vulnerability and weakness in relation to those persons. (*Audet*, para. 36)

45 The position of trust is in respect of a young person who is in a position of vulnerability and weakness. The definition is nuanced and considers the role and position of the adult but also the circumstances of the young person.

It will be up to the trial judge to determine, on the basis of all the factual circumstances relevant to the characterization of the relationship between a young person and an accused, whether the accused was in a position of trust or authority towards the young person or whether the young person was in a relationship of dependency with the accused at the time of the alleged offence. One of the difficulties that will undoubtedly arise in some cases concerns the determination of the times when the "position" or "relationship" in question begins and ends. It would be inappropriate to try to set out an exhaustive list of the factors to be considered by the trier of fact. The 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 will of course be relevant in many cases. (*Audet*, para. 38)

46 *Audet* has been somewhat criticized for the lack of clarity with respect to the definition of a position of trust but as Justice La Forest noted, it really does depend on the circumstances.

47 Professor Jeremy Patrick, in the article, "Sexual Exploitation and the Criminal Code" (2006), 43 Alta. L. Rev. 1057, noted that judges must craft a definition of trust that carries out the goal of preventing exploitation while not creating an overbroad definition that would in effect raise the age of consent to 18 or duplicate the words "authority" or "dependency".

48 The purpose of the section is to criminalize exploitation. A definition of "trust" that does not remain within the bounds of the concept of exploitation could have the effect of making illegal relationships with 16 and 17 year olds that are not of the kind that are potentially exploitative. It is the nature of the relationship and the sexual contact with a young person that give rise to criminal culpability.

49 The factors set out in *Audet* to determine whether an adult is in a position of trust are the age difference, the evolution of the relationship and the status of the accused in relation to the young person. To those should be added the vulnerability and weakness of the young person to reflect the purpose and objective of the sexual exploitation provisions.

[53] In *R. v. Tombs*, 2017 ONSC 2625, Pomerance J. (as she then was) provided an extensive overview of the law before suggesting that the following factors were relevant to deciding whether an individual was in a position of trust with respect to another at paragraph 36:

- 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.).

[54] I have reviewed a substantial number of cases touching on the interpretation of position of trust. These would include the following:

- ***R. v. Fisher*, 2019 NSSC 378**

The accused first met the complainant when he was a youth pastor and she an attendee in the youth group. The argument of the accused was that by the time their relationship became sexual, some years later, their relationship had evolved and they had become more like

equals. The complainant had joined the leadership team for the youth group. The young person was 17 and the accused 28 years old when the relationship turned physical.

Jamieson J. (as she then was) considered substantial evidence with respect to the relationship and noted that the complainant saw the accused as an integral part of her life. He was a confidant and someone on whom she relied. The complainant trusted the accused in every way and the relationship was vitally important to her as a naive youth. The decision contains a comprehensive analysis underpinning Justice Jamieson's conviction on the s. 153 allegation.

- ***R. v. Poncelet, 2008 BCSC 202***

A 40-year-old man was charged with sexual exploitation of the 15-year-old complainant. He had been hired to offer her horse-riding instruction.

The trial judge offered a helpful overview of the law. The critical issue was identified as being whether the evidence revealed a power imbalance in the relationship that left the complainant in a position of vulnerability.

The trial judge noted that the definition remained "elusive" for relationships outside the classic instances involving teachers, parents, religious leaders, and spiritual advisors. Those categories of relationships are presumptive positions of trust because they include an inherent "power of dependency" based on the social role entrusted to them by society. The Crown is not required to prove that any power imbalance or vulnerability of the young person was employed to gain consent to sexual activity.

The young person testified that when the arrangement started, she viewed the accused as a friend and teacher. She respected him and thought that he was nice, friendly and respectful. She found him attractive and she felt an emotional bond between them. She was "curious" about his sexual overtures and open to something developing. She said that their working relationship included a lot of laughter, and their sexual relationship was "fun". The trial judge concluded that she could not see any inherent power imbalance in the relationship as seen through the lens of the young person's subjective experience, but the Court went on to consider the objective nature of the relationship.

The age difference was significant. The Court stated that the instinctive reaction might be one of distaste given this fact. The accused's actions could be viewed as inappropriate or even morally reprehensible. Drawing on caselaw it was noted however that something more than an age difference must exist in order to find the "inherent power imbalance and vulnerability that is associated with trust relationships" (para. 58).

The Court concluded that the way the relationship developed did not "impart an inherent power imbalance or vulnerability". The relationship had "none of the indicia of grooming and manipulation" that were evident in other cases. No position of trust was found to exist. Findings of not guilty were entered.

- ***R. v. J.J.O, 2016 ONCJ 264***

At the time of the alleged offences the accused was 25 and the complainant 16 years of age. Accused was coach at cheerleading club attended by the young person. Complainant was in a vulnerable position given that she was having personal and family issues. Accused ignored or was willfully blind to the true situation and the position his status and relationship to the accused put him in.

Although he was not a direct part of her cheerleading team, he had a general position that created a power imbalance. He was found to be in a position of trust and convicted pursuant to s. 153 of the Criminal Code.

- ***R. v. Aquitania*, 2014 ABPC 108**

The accused was a janitor in a school and additionally volunteered to provide art instruction to children. He met the complainant while offering such instruction.

He worked in the school, and it was known that he would come in contact with children as a result of both that position and the extra-curricular role. The accused was found to be in a position of trust and convicted.

- ***R. v. G.G.*, 2010 ONSC 4077**

The trial judge discussed the law relating to position of trust at some length. It was commented in part that a person is in a “position of trust” with a young person within the meaning of s. 153 of the Criminal Code “(w)here the nature of the relationship between [the] adult and [the] young person 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.” In such circumstances, “the adult is in a position where those concepts of reliability and truth and strength are put to the test. Taken together, all of these factors combine to create a ‘position of trust’ towards the young person.”

- ***R. v. D.C.S*, 2023 NSSC 25**

Justice Norton of our Court canvassed the law pertaining to position of trust. The entirety of his statement of the law is helpful. He noted in particular (para. 49) that 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. He also referenced other caselaw (para. 50) that notes that 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.

- ***R. v. Allard, 2023 ABKB 555***

In this case the accused was a 32-year-old social worker who had a sexual relationship with a 14-year-old client. She was the young person's case worker when he lived in a treatment facility for young people in the child welfare system. The accused met the young person when he was a 13-year-old. She organized his treatment and assessments. He said that he and Ms. Allard took a liking to one another. She would take him outside of the facility to parks, movies, restaurants, and even pubs. She would give him cigarettes and other extra privileges. The relationship was close and became more physical. According to the young person, the relationship "lasted for years".

The accused was found to have been in a position of authority but also in a position of trust. The Court took particular note of the vulnerability of the young person:

149 Overlaid on this position of authority is Ms. Allard's position of trust towards AN, which I find covered the entire time in which Ms. Allard and AN

engaged in sexual activity from March of 1990 to the end of March of 1992. The large age gap and the formal and informal status of Ms. Allard towards AN is indicative of a relationship between them built on trust. AN spoke of Ms. Allard challenging him as a young person and motivating him in a positive way. AN looked up to Ms. Allard as someone who cared and loved him. She gave him the attention he craved and lacked as a young person in the child welfare system. Ms. Allard was a welcoming presence for AN. She accepted him and he often went to her home.

The accused was convicted in light of the power imbalance, the age gap, the emotional challenges and substance abuse concerns of the young person.

- ***R. v. Selby, 2025 ABCJ 70***

The accused was charged with sexual exploitation. The complainant was a former student at the high school where he taught. He had been her homeroom and English teacher. He began a sexual relationship with her after she graduated but when she was 17 years old. He was 36. The relationship continued after she turned 18. The issue was whether the accused held a position of trust with respect to the complainant following the end of the formal teacher student

relationship. The Crown argued that as a teacher, Mr. Selby continued to be in a position of trust after the young person's graduation.

The trial judge set out the factors to be considered at paragraph 120 of the decision:

- Positions of trust are found where a young person is particularly vulnerable to the persuasive influence of an adult.
- Determining whether an adult is in a position of trust towards a young person depends on the factual circumstances of each case.
- Though not exhaustive or determinative, Courts should consider the following when making this determination:
 - The age difference between the adult and young person;
 - The evolution of the relationship between the adult and the young person;
 - The status of the adult in relation to the young person;
 - The degree of control, influence or persuasiveness exercised by the adult over the young person;
 - The expectations of the parties affected which includes the parents of the young person; and
 - Any grooming, pressuring or incentivising behaviour by the adult.
- Consideration of these factors is mandated to determine if there existed a power imbalance that left the young person in a vulnerable position. The young person's circumstances, maturity, sophistication, independence and agency may factor into this determination.
- Age difference on its own is not enough to find an inherent power imbalance. A large age difference, however, weighs in favour of finding a relationship of trust.
- An adult in a position of trust may be seen as having some duty to conduct themselves in a certain fashion towards a young person that would not be imposed on a regular person.
- Whether an adult occupies a position of trust may change over time. An adult who was at one point in a position of trust towards a young person may no longer occupy that position at the time sexual activity occurs.

- However, positions of trust may linger even after the circumstances originally giving rise to the relationship have ended.
- An adult may be viewed as being in a position of trust when the young person would trust the adult, view them as an authority figure, or where they were given access to the young person as a result of an existing relationship.

The Court concluded that the accused was not in a position of trust after the young person had graduated. This was based on a multi-factorial analysis but was centered around the scope of independent action and decision making engaged in by the young person.

- ***R. v. M-S., 2016 ONSC 2969***

In this matter the accused was a leader of an indigenous drum group that travelled around Ontario performing and appearing at traditional ceremonies. He was an acknowledged mentor and leader of the group. He was roughly a decade older than the 15-year-old complainant who was a junior member.

The Court highlighted a portion of Audet, as follows [para 96]:

Finally, Blair J., also in P.S., wrote the following about the term "position of trust":

One needs to keep in mind that what is in question is not the specialized concept of the law of equity, called a "trust". What is in question is a broader social or societal relationship between two people, an adult and a young person. "Trust", according to the Concise Oxford Dictionary (8th ed.), is simply "a firm belief in the reliability or truth or strength of a person". Where the nature of the relationship between an adult and a young person 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, the adult is in a position where those concepts of reliability and truth and strength are put to the test. Taken together, all of these factors combine to create a "position of trust" towards the young person. [Emphasis added.]

I would add that the definition of the words used by Parliament, like the determination in each case of the nature of the relationship between the young person and the accused, must take into account the purpose and objective pursued by Parliament of protecting the interests of young persons who, due to the nature of their relationships with certain persons, are in a position of vulnerability and weakness in relation to those persons.

The Court ultimately concluded on the facts of that case that the sexual relationship that occurred was not one which fell within s. 153 as, when viewed in totality, the situation was not one of authority or trust between the parties.

- ***R. v. Aird, 2013 ONCA 447***

The accused was a 28-year-old student teacher who had been hired to tutor the complainant. The complainant was 16 when she first met the tutor but soon turned 17.

The accused and the complainant had a sexual relationship while the complainant was 17. In deciding whether the accused was in a position of trust the Court reviewed the factors set out in *Audet*. It was noted that the considerations which bear on whether a relationship is one of trust flow from the purpose of s. 153, which is to protect a young person who is vulnerable to an adult because of the imbalance in their relationship. The Court reviewed the factors

identified in case law including the age difference between the accused and the young person, the evolution of the relationship and the status of the accused in relation to the young person. In addition to these core factors, it was noted that 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, young person and the young person's parents" are also relevant elements for consideration.

The Court considered the distinction between "trust" and "authority". The concepts are related but different. A person in a position of trust may not be a person in a position of authority. A position of authority involves the notions of power and the ability to control a person's destiny. A position of trust may incorporate those things but is founded on notions of safety and confidence and the reliability that the special nature of the relationship will not be violated.

The accused was found to have been in a position of trust. The complainant and her family trusted or relied on the tutor. The family allowed her to meet alone with the accused. The accused set his own tutoring rules and when and where he conducted the sessions.

According to the trial judge, when the complainant met the appellant, she was naïve and "easy to lead on". She, along with her mother, looked to the appellant for his help and guidance. She was entitled to trust that he would not take advantage of his position and use it to start a sexual relationship with her.

The appellant, Mr. Aird, was found to have been in a position of trust. The Court considered all the factors, none of which alone was determinative. Cumulatively the s. 153 offence was made out.

[55] This is clearly not meant to be an exhaustive list of every relevant case. It is purely an overview. I have however read and considered, in the course of deliberations, all cases raised by the parties.

Application of Principles

[56] As has been made clear, whether an adult defendant is in a position of trust or authority with respect to a particular young person will be determined on a case specific basis grounded in the particular facts and circumstances drawn from the evidence.

[57] The focus must be on the particular relationship between these parties and the circumstances prevailing at the material time, as informed by any relevant aspects of its history and evolution.

[58] We are addressing an allegation of a violation of a position of trust. It is acknowledged that the circumstances do not support either the existence of a dependency relationship or a finding based in a position of authority.

[59] To explore the position of trust question, I begin with what I have learned about M.M. It is evident to me that M.M. was here to speak frankly about this complex period of her life. As I have noted above, I found her to be a credible and reliable witness. She acknowledged her own infatuation with the accused. She acknowledged that by the time it happened, at the age of 15, she believed she wanted an intimate relationship with the accused. In hindsight she has formed a view as to how Lorna Letcher took advantage of her, but these cases are not determined on the basis of the complainant's personal hindsight.

[60] At the time of these events, M.M. believed she was in a loving and mutual relationship. As the caselaw makes clear, this can be exactly why this offence was created. If a position of trust exists, we do not allow the young person's seeming openness to the relationship or activity to be the determining factor.

[61] If the position of trust has been proven to the requisite standard, and it persists contemporaneously with the proven sexual acts, then the offence is made out. We expect the adult in the position of trust to exercise the adult judgment not to avail themselves of the opportunity that an infatuation may have opened to them.

[62] As to considerations identified in caselaw, there was obviously a substantial age difference here, standing as it did at 32 years. While this is not enough on its own to establish a position of trust, such a gap can be reflective of a power or maturity imbalance. Prior caselaw has identified why this is a relevant, but not on its own, determinative factor.

[63] As to the developmental or emotional vulnerability of M.M, I am satisfied the evidence discloses M.M. was going through an emotionally fraught time as she grappled with her personal identity and sexuality.

[64] The evidence discloses she was dealing with the decision as to whether and how to come out to some people in her life, but not yet her parents, as gay.

Teenage years can be difficult at the best of times. Her teen years were complex and fraught for M.M. given her own struggles with her personal identity, sexuality and the complexities of her family dynamics. The relationship with her mother, at critical times here, was a challenging one.

[65] The entirety of M.M.'s situation during this critical time - her youth, inexperience at life, vulnerability and the questioning she was experiencing with respect to her personal identity - left her open to influence, direction and subtle levels of persuasion that would not have been evident to her. I am not maintaining this would distinguish her from many young people in their mid-teens, the period of this Indictment. Throughout this period, Lorna Letcher assumed the role and status of a confidante and mentor.

[66] While M.M. was clearly intelligent, she was not especially mature or sophisticated. This again highlights the need for trusted adults to be sources of support and guidance as opposed to adopting the role of lover or partner.

[67] I have considered the status of Lorna Letcher in the life of M.M. together with the evolution of the relationship. The accused came into the life of M.M. as an instructor and music leader. She originally had access to M.M. because of her role as a trusted figure dealing with young people involved in music and band. Her access to and contact with M.M. did evolve but the unbalanced power relationship between them persisted in important respects. She was a trusted adult figure prominent in the music world that was obviously such an important part of M.M.'s life. As just a small example, Lorna Letcher was a reference for M.M. as she applied for student jobs including the position she obtained as a cashier.

[68] Lorna Letcher had space within the high school over which she had control at material times as canvassed in evidence. She welcomed M.M. into that space and ultimately, as M.M. testified and I accept, it was the space used to initially facilitate the sexual contact.

[69] This point has to be treated with care as there should be no importation of position of authority considerations or equation of the nature of the space itself with a presumptive position of trust. However, I find it does assist with assessing the evolution of the relationship and the accused as an individual positioned to exercise guidance, control and influence by virtue of their status in the life of the young person and contact with them.

[70] As seen above, a number of cases have observed that parental expectation with respect to the nature of the relationship between the young person and the accused adult can play a role within the trust analysis. Clearly this would have to be done cautiously. As to the present case, I did not find the evidence of M.M's mother provided me with a great deal of material information relevant to the trust aspect of the analysis. She did provide timing and contextual evidence, which I accept, around when certain things took place as regards her daughter's schooling, development and activities.

[71] As to other points of analysis, I have considered that in 2005 – 2007 M.M. would have believed she was exercising her own independent judgment as it pertained to Lorna Letcher. She did not believe at the time that she was under the sway of the accused, or was being manipulated, or having her judgment impacted, based upon the nature of the relationship between them.

[72] Once again, this does not determine the issue of trust or authority. But it is a component of the complete picture.

[73] It is apparent that M.M. and the accused did take steps to conceal their relationship. This is frequently a feature of these matters, but it must be weighed carefully and not misapplied.

[74] As has been observed in prior caselaw, even in the absence of a relationship of trust or authority, there may be reasons why parties in age disparate relationships seek to keep the existence of the relationship secret. For instance, Justice Campbell in *R. v. I.J.S.*, *supra.*, engages in discussion of this point in a situation where the parties in that matter took steps to conceal the relationship: see also *R. v. J.B.*, 2026 ONCA 44.

[75] I have also considered, as have other judges in weighing this offence, what we tell juries about the process of considering this offence. In convicting an accused of being in a position of trust with respect to a 17-year-old family

employee with whom he had sex, the trial judge in *R. v. Frost*, 2015 MBQB 96

(appeal dismissed 2017 MBCA 43), stated as follows:

46 I bear in mind the Supreme Court's comments in *Audet* and, framed more expansively, the specimen jury charge in *Canadian Criminal Jury Instructions* (4th ed) (November 2014 — looseleaf) at chapter 6.67C:

An accused is in a "position of trust" to a young person when the nature of the relationship is such that an accused holds the confidence or reliance of that young person; in other words, when the nature of the relationship is such that the young person places confidence, reliance, and trust in the accused's good judgment and good intentions; this reliance places an obligation or responsibility on the accused not to breach that trust. An important factor in determining whether a position of trust exists is the extent to which the young person is (or is not) vulnerable to the influence and persuasive powers of the accused. A "position of trust" may evolve over time given the particular nature of the relationship, or it may be created if the accused occupies a position (such as a coach or dance instructor) that society has entrusted with special obligations or responsibilities in relation to young people. An accused can be in a position of trust without necessarily being in a position of authority. In addition to parents, teachers and employers, persons such as counsellors, caregivers, coaches, family friends, relatives or any other person in whom the young person places his or her confidence, reliance or trust, may be persons in a position of trust — that is a matter for you to decide based on the relationship.

[76] Like the judge in *Frost*, I too have found it useful to consider how we express to juries the nature of the weighing exercise in these cases, specifically in how they are asked to consider issues of confidence, reliance and trust.

[77] In *R. v. Aird, supra.*, the Ontario Court of Appeal considered in some detail the relevance of “the degree of control, influence or persuasiveness” which the accused may have over the young person. The record in this trial reveals evidence of the important, even central, role that Lorna Letcher played in M.M.’s life during the critical period. M.M. was infatuated with and emotionally dependant on Lorna

Letcher during the period covered by the Indictment. This would distinguish her role in the life of M.M. from, for instance, the circumstance found in *R. v. J.B.*, *supra.*, where the accused there was found to have had little or no influence, power or persuasiveness over the accused.

[78] There is obvious complexity to the weighing of this consideration because, in many ways, M.M. actively ceded this influence to Lorna Letcher, who she saw as her girlfriend. I also acknowledge instances highlighted by defence where influence, if it existed, was arguably being used for good on some topics (e.g. where Lorna Letcher encouraged M.M. to get good grades or counselled her to consider relying on her sister as a confidante as she considered how to come out to her family).

[79] At its core, however, significant and guiding influence in an adult over a young person can be a marker that the adult is within the young person's circle of trust. I have weighed this factor as one element among many. A young person has a right, in such a case, to rely on the judgment of the trusted adult not to step over the line of their privileged position to engage in a sexual relationship. This is the core of what s. 153 was designed to capture and why the drafters chose to approach the offence from a qualitative and contextual perspective, as opposed to the creation of a purely category-based prohibition.

[80] I remind myself of the perceptive comments of Justice Pomerance in *R. v.*

Tombs, supra:

37 ... 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.

[81] Weighing all the factors, I have searched the entirety of the evidence for reasonable doubt.

[82] Case law is clear that the Court will assess all the evidence presented at trial under what has come to be known as the *W.D.* analysis as set out in *R. v. W.D.* (1991), 3 C.R. (4th) 302 (S.C.C.), and as modified by necessity to account for the fact the accused did not testify.

[83] I have also found helpful the restatement of *W.D.* as provided by the Nova Scotia Court of Appeal in *R. v. N.M.*, 2019 NSCA 4.

[84] Aspects of the evidence proffered in the Crown's case, as challenged by the defence, have been assessed against the principles established in *R. v. W. (D.)*.

[85] The Defendant in this case did not give evidence. However, as we know, an accused does not have to give testimony to deny allegations in order to assert their innocence. She is presumed innocent until that presumption is displaced by proof beyond a reasonable doubt.

[86] As was said by the Ontario Court of Appeal in *R. v. D.(B.)*, 2011 ONCA 51:

114 What I take from a review of all of these authorities is that the principles underlying *W.(D.)* are not confined merely to cases where an accused testifies and his or her evidence conflicts with that of Crown witnesses. They have a broader sweep. Where, on a vital issue, there are credibility findings to be made between conflicting evidence called by the defence or arising out of evidence favourable to the defence in the Crown's case, the trial judge must relate the concept of reasonable doubt to those credibility findings. The trial judge must do so in a way that makes it clear to the jurors that it is not necessary for them to believe the defence evidence on that vital issue; rather, it is sufficient if - viewed in the context of all of the evidence - the conflicting evidence leaves them in a state of reasonable doubt as to the accused's guilt: see *R v. Challice*. In that event, they must acquit.

[87] This means if any trial evidence favourable to the accused leaves me with a reasonable doubt, then she must be acquitted. If I do not know whether to believe the favourable or unfavourable evidence to her, then she is entitled to an acquittal. Even if I am not left in doubt by the evidence favourable to her, I must assess whether the Crown has proven the guilt of the accused, beyond a reasonable doubt, in light of all the evidence: see *R. v. D.P.*, 2016 ONSC 7795. I have carried out this search for doubt across the entirety of the evidence.

[88] I have concluded that the accused was an adult who occupied a privileged status of influence, persuasiveness and importance in the life of this young person. I have considered the entirety of the circumstances as these reveal the nature of the relationship and power imbalance between the young person and adult some 32 years her senior.

[89] I am fully satisfied that it has been proven beyond a reasonable doubt that Lorna Letcher was, at the relevant times as set out in the Indictment, in a position of trust with respect to M.M. The sexual contact, as testified to by her, took place, and this was contemporaneous with the existence of the trust relationship.

Conclusion and Disposition

[90] Accordingly, Ms. Letcher, please stand.

[91] Having considered all the evidence and having weighed any gaps in the evidence for reasonable doubt, I have determined that the Crown has proved these charges against you beyond a reasonable doubt.

[92] Findings of guilt are entered with respect to the three counts before the Court. If any count against you might be the subject of an application pursuant to *R. v. Keinapple*, 1975 1 SCR 729, this will be explained to you by counsel and considered by the Court at the next stage of the proceeding.

Hunt, J.