L.SUPREME COURT OF NOVA SCOTIA

Citation: R v. *Taweel*, 2014 NSSC 103

Date: 20140224
Docket: HFX No. 410910
Registry: Halifax

Between:

Her Majesty the Queen

v.

Stephen Nicholas Taweel

Restriction on Publication:
Pursuant to s. 486 of the *Criminal Code of Canada*

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge:	The Honourable Justice Patrick J. Murray
Heard:	November 18 – 28, 2013, in Halifax, Nova Scotia
Counsel:	Scott Morrison, for the Crown Mark Knox, Q.C., for the Defendant, Stephen Taweel

[3]

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judge or justice may make an order directing that any information that could identify the complainant or witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.02, 279.03, 346 or 347.

(ii) an offence under subsection 146 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1)(assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statues of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

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

By the Court:

Introduction

[1] Stephen Nicholas Taweel of Charlottetown, in the County of Queens, PEI, is charged that he, between the 1st day of July, 1991 and the 31st day of October, 1991 at or near Dartmouth, in the County of Halifax, Province of Nova Scotia, did unlawfully commit a sexual assault on S. L., contrary to Section 271(a) of the **Criminal Code of Canada**.

[2] Mr. Taweel has plead not guilty to the charge and a trial was held between November 18 – November 28, 2013. This is my oral decision in respect of his trial on that charge.

Admission of Fact

[3] Just prior to the trial, as part of a preliminary matters, the Crown, represented by Mr. Morrison, and the Defence, represented by Mr. Knox, filed an admission of fact which was entered as Exhibit #1, which reads as follows:

> Pursuant to Section 655 of the Criminal Code, Stephen Nicholas Taweel admits the following facts for the purpose of dispensing with proof thereof at trial:

1. Defence admits date for the purposes of this proceeding – there was contact and communication between S. L. and Stephen Taweel in 1991;

Dated this 18th day of November, 2013 at Halifax, NS.

Amendment to Indictment

[4] The formal admission made pursuant to the **Criminal Code** resulted in the Crown seeking an amendment to the indictment, which dealt with the year of involvement between the Complainant, S. L., and the Accused, Stephen Taweel.

[5] The time frame in the indictment was therefore amended with the consent of Crown and Defence. The Court allowed the amendment which changed the period of the alleged offence. Instead of "the 31st day of July, 1990 to the 1st day of December, 1990", the indictment was amended to read "from the 1st day of July 1991 to the 31st day of October 1991". That is the period for which Mr. Taweel stands charged of the offence of sexual assault, contrary to s. 271(1)(a) of the **Criminal Code of Canada**.

[6] A second count in the indictment was withdrawn.

Shift in Crown's Case

[2]

[7] The Crown's case therefore underwent a critical change, shortly before trial. In 1991 the age of consent was 14. With the change in the year from 1990 to 1991, the Complainant who was 13, in the year 1990 would be 14, in 1991 thus placing her at an age where consent could be given. (Reference – s. 150.1 of the **Criminal Code of Canada** in 1991.)

Presumption of Innocence

[8] As in all criminal matters the accused, Mr. Taweel, is presumed to be innocent of the charge against him. This is the most fundamental principle in our criminal law. Every person charged with a criminal offence is presumed innocent until the Crown proves his or her guilt beyond a reasonable doubt. There is no burden on the Accused, Mr. Taweel, to prove that he is innocent.

[9] The Accused, Mr. Taweel, does not have to prove anything. It is up to the Crown to prove its case, on each element of the offence of sexual assault, beyond a reasonable doubt. This burden remains on the Crown and never shifts.

Beyond a Reasonable Doubt

[10] I have said that the onus of proof is on the Crown and the standard of proof is beyond a reasonable doubt. A reasonable doubt is one that is not imaginary or frivolous. It is not to be based on sympathy or prejudice. Instead, it is based on reason and common sense. It must logically come from the evidence or lack of evidence.

Historical

[11] This is a so called "historical" sexual assault case. It is alleged to have occurred more than 20 years ago, now 23 years ago, in 1991. As Defence counsel has noted, there have been successful prosecutions. The ability to recall and remember events which occurred many years ago is something in which the Court must be ever mindful, in assessing the evidence and determining credibility. The Court must consider and take into account the lapse of time between the event and the time that evidence of the event is being given. Age is a relevant factor, in that an adult of the age 36, in this case, is testifying about events which she says occurred when she was 13 or in fact 14 years old, given the acceptance of the admission of fact by the Crown.

[12] The point is, time can have an impact on the ability to recall, with respect to recollection in general and courtroom testimony in particular. I remind myself that such an assessment must be made in respect of all of the Complainant's evidence, whatever her age, and wherever and whenever the assault was said to have occurred. (**R**. v. **J.M.M.**, 2012 NSCA 70).

Background

[13] The parties met on […] in PEI, in July of 1990 or 1991. Mr. Taweel was either 32 or 33 at the time and Ms. L. was either 13 or 14. They have differing accounts as to how they met and who initiated it, but they met at the beach. The Accused gave evidence that he asked her age and Ms. L. told him she was 16. She was outgoing and attractive, he testified. In total, (according to Mr. Taweel's evidence) they met three (3) times in PEI and once (1) at Mr. Taweel's sisters house in Dartmouth, NS. Nothing happened in Dartmouth he stated, but there were two encounters in PEI of a sexual nature. He is charged only with the offence as alleged in Dartmouth, Nova Scotia.

[14] Ms. L. on the other hand, gave evidence which describes a much more invasive set of circumstances and more meetings between her and the Accused. From the first meeting in PEI, he was persistent, she said. She was young,

vulnerable, and naïve. At their initial meeting he made her promise to return to see him at the beach the next day. The next day she returned and met him in the same general area. It didn't seem right to say no, she testified, and she didn't know what else to do. The sexual activity began at that second meeting, and continued for five (5) more meetings in PEI. There was another encounter at the beach, two (2) more in a field, and two (2) more in Mr. Taweel's car for a total of six (6) incidents in PEI, according to S. L.. She is the Complainant and main crown witness. These incidents as alleged, included touching, digital penetration, oral sex and vaginal penetration or intercourse.

[15] Ms. L. was staying in PEI for the summer months at her family cottage near […]. She said he contacted her by phone at the cottage disguising his voice to appear younger. She testified he told her to call him Uncle Stephen in public. She felt trapped, confused and was unable to extricate herself from him, she said in her evidence. He was older, relaxed. He walked with an easy gait and had a relaxed demeanour.

[16] Ms. L. says the contact continued in Dartmouth, where he showed up after school one day at her Junior High School, […], in Dartmouth. She testified that on three (3) occasions in September and in October they went to his sister's house at

[…] in Dartmouth and had intercourse, each time, in a bedroom in the basement. This is where he stayed when, on occasion, he would visit Dartmouth.

[17] The parties had no previous relationship and were not known to each other. They are not related and were strangers when they met. Ms. L.'s date for birth is May […], 1977. In July of 1990, she was 13 years of age, in July of 1991, she was 14 years of age.

[18] The Accused gave evidence. Mr. Taweel maintains that with respect to the Crown's case, things don't add up. Now that the accused was 14 at the time of the offence, factual consent is "on the table". This is why he says, the Complainant, in her evidence, is made to appear much younger. Why she said she was building a sandcastle, and being taken for ice cream, and unable to pull away from Mr. Taweel's confidence.

[19] She gave him (he says) the phone number to her grandparents' cottage. He was open about their relationship, being seen at the beach, in his sports car, dropping her off at or near […] near her family's cottage.

[20] Mr. Taweel says she even admits to assisting him at times during their contact. She conducted research on him and is knowledgeable in respect of aspects of criminal law and consent. She has used words like "power imbalance", "silence

is not consent" and "grooming". In short the defence submits there are deficiencies in the Complainant's evidence.

[21] Mr. Kennedy, an engineer and university friend of Mr. Taweel's, gave evidence that Ms. L. phoned Mr. Taweel in Brampton while he (Mr. Taweel) was staying with him at his home at 18 Peaceful Place in Brampton, Ontario, in 1991.

Theory of the Crown

[22] The Crown's theory of this case is that the Accused sought out Ms. L., because she was different. He took advantage of that, and there is an enormous amount of corroboration to establish that he did.

[23] There is evidence ranging from the business card at 18 Peaceful Place, to […], Dartmouth, where she, remembering aspects of it, identified the house, belonging to Mr. Taweel's sister, Jeanette, where the alleged offence took place.

[24] In addition, there is the corporate records of KAJ Coffee (Exhibits # 3a, b, c, and d) confirming the Accused's involvement with a Second Cup franchise, as described by Ms. L. and confirmed by Mr. Taweel himself.

[25] The Crown states in fact Mr. Taweel, in cross examination, has confirmed the salient details of their involvement, except the full extent of the sexual activity

that took place in 1991. To that end, the Crown submits Mr. Taweel has essentially adopted the narrative of Ms. L., but has changed it or cut it off, so as to exclude the details pertaining to the offence, in effect denying the *actus reus* or the act of sexual assault.

Theory of the Defence

[26] In addition to the Defence positions which I have already outlined, the Defence say Ms. L. has told this story for so long, it has become aggrandized or embellished. It is unsustainable, they say, and it makes no sense, adding that after a while, witnesses begin to believe what they say. They allude to the Complainant's evidence, that it was "surreal" and that "it seemed that it was happening to someone else".

[27] In addition, the Defence points to other evidence of the Complainant. She said she would be unable to write Mr. Taweel or send him a letter, as she would be unable to obtain a stamp. She was 14 years of age, not a child. He then walked on the beach with a shy, perplexed, 14 year old, who was in shock. This would be quite noticeable. Her evidence, they submit is to the effect, that "maybe I did touch him, maybe I did kiss him".

[28] There are further examples of the Complainant's evidence which the Defence argues don't make sense. His suggestion of "lingerie" to her, over the phone. Him asking her to fly off to Toronto with him, she an introverted, socially underdeveloped naïve teenager.

[29] Mr. Taweel, this being over 20 years ago did not, says the Defence, attempt to provide details of every minute with S. L..

[30] The Defence maintains that Mr. Taweel's evidence was given in a straight forward manner. It is an embarrassing story yes, but one that was told confidently. We can't get too "puritanical" says Mr. Knox on behalf of his client. He argues their relationship quickly become highly sexualized in a short period. Society as a whole may not approve, but it's not the first time an older adult has had a relationship with someone who is much younger.

[31] I pause here to review the essential elements of the offence of sexual assault, as contained in s. 271.

Elements of the offence

[32] A conviction for sexual assault requires proof beyond a reasonable doubt of two basic elements. First that the Accused committed the act, the *actus reus* and second, that he or she had the necessary mental element, the *mens rea*.

[33] The *actus reus* of sexual assault is established by proving 3 elements:

i. Touching;
ii. That the touching or contact was of a sexual nature;
iii. The absence of consent, of the Complainant.

[34] The mental element, the *mens rea* is basically satisfied by the Crown proving beyond a reasonable doubt that the Accused intended to touch the Complainant. This is because sexual assault is a crime of general intent.

[35] I will further explain these requirements, but at this point these are the basic elements. The Crown must prove each of them beyond a reasonable doubt.

W.D. – Instruction

[2]

[36] The principles set out in **R.** v. **W.D.**, [1991] 1 S.C.R. 742, apply to the testimony of the Accused, Mr. Taweel, given at trial. With respect to his evidence. I remind myself as follows:

1. If I believe Stephen Taweel, that he did not commit the offence he is charged with, I must find him not guilty;

2. Even if I do not believe Stephen Taweel, if his evidence leaves me with a reasonable doubt about his guilt or about an essential element of the offence he is charged with, I must find him not guilty of the offence;

3. Even if the testimony of Stephen Taweel does not leave me with a reasonable doubt as to his guilt, or about an essential element of the offence of sexual assault, I may convict him only if, on the evidence I do accept, I am satisfied of his guilt beyond a reasonable doubt.

Narrative Evidence

[37] I remind myself further, that at a ruling made by me at trial, the Crown was permitted to call evidence as to the events, as alleged in PEI, even though Mr. Taweel is charged with committing the offence in Nova Scotia. In seeking to admit this (PEI) evidence from the Complainant, the Crown acknowledged that it

is limited in scope. The purpose for which the Crown sought to admit this so-called "similar fact evidence" was to explain the relationship between the Complainant and the Accused, and to provide context for the evidence pertaining to and occurring in Nova Scotia.

[38] Thus, in my ruling, I stated as part of my ruling, that the evidence may not be used to infer the guilt of the accused. Specifically, the evidence must not be used to the prejudice of the Accused by inferring guilt from disposition or from any inference of bad character.

[39] I did state, in my ruling that this narrative evidence could be used to assess credibility and to allow the Crown to establish the unfolding of events. That is the probative value of the evidence. In short, the evidence of the Complainant as to what occurred in PEI is narrative evidence, which was not admitted for its truth. The Crown submits it may be used to assess the consistency of the Complainant's conduct and thus her credibility. (**R.** v. **R.(D.A.)**, 2012 NSCA para.23)

Credibility and Reasonable Doubt

[2]

[40] The assessment of the credibility of a witness or witnesses is an important consideration when weighing evidence to determine if the Crown has proven the guilt of the Accused beyond a reasonable doubt.

[41] Assessment of the evidence should occur as a whole. Even so, there may be critical aspects where inconsistencies must or should be resolved. The same level of scrutiny must be applied to both Crown and defence evidence. (**R.**v. **J.M.M.** (CA) (Citation to be inserted)

[42] This is of course subject to **W.D.** which instruction I have said is applicable to this case.

[43] I turn now to assess the evidence at trial.

Evidence at Trial

[44] This being a case to which **W.D.** applies, I shall first review the Defence evidence.

Stephen Taweel

[2]

[45] Mr. Taweel is 55 years of age and currently resides in Charlottetown, PEI. He received his degree in civil engineering from UNB in 1981. At the time of the alleged offence, he was residing in Toronto, with a university friend, Mr. Kennedy. He was seeking employment at the time. He had returned to PEI for a 2 week vacation in late July, early August of 1991. His parents resided in Charlottetown and he stayed with them. He has a sister, Jeanette, who resided at and is the owner of […], Dartmouth, Dartmouth, Nova Scotia at the time of the alleged events. He took the Complainant, S. L. there, by his own admission.

[46] He drove a red, RX7 at the time, according to his evidence. He drove to […] from Charlottetown some 30 minutes away. Also, he testified he asked S. L. how old she was, to which she replied 16. This was when they first met on the beach in […], near […] and near where S. L. was staying at her family's cottage on […].

[47] Mr. Taweel was, at the time, 33 years old (in 1991). He described first meeting S. L. when she approached him and said "Hi", while he was walking in the water at […]. He was in the water up to his waist, he said. They struck up a conversation and walked the beach for a while. She seemed outgoing and fun. At her suggestion he says they agreed to meet at the beach the next day.

[2]

[48] The conversation he says that day was introductory in nature, where you from, she asked about relatives, are you here for the summer, what was he doing in Toronto. He asked where she was staying. She explained […]. S. L. asked him if he was coming to the beach the next day. He asked about school and what grade she was in. Grade 10 she replied. He says they may have chatted more. He said he had no plans for next day. She said he should come down and they would go for a walk. They agreed to meet the next day.

[49] Mr. Taweel said the next day when he arrived, she was there, in the parking lot. They went for a walk. She had a towel or a blanket and he recalled sitting back away from the beach in the dune area. He said "we" put the blanket down and sat side by side. He recalled having his arm around her, one thing led to another and they started kissing each other, he started touching her, his hand was outside private area, after a short period they stopped, looked (he didn't say who) to see if anyone was around, and then she unbuttoned her shorts and pushed them down and with both of her hands placed his hand and guided his fingers into her vagina. It stopped shortly after that. She put her shorts back on. They just sat there, chatted a bit, and went back to the beach area.

[50] He testified that on the way back, she asked if he was coming back. He said he had work to do, and wasn't sure. She gave him her phone number, and if he came back to give her a call. He asked if she wanted a drive back, she said no. He wrote his number on the back of his business card. He believed he may have written the phone number for his parents' house.

[51] There was a second meeting in PEI which Mr. Taweel described. Prior to describing that encounter, he was asked by his counsel whether the Complainant showed or expressed any aversion to the dune area, to which he replied no. He confirmed also that the business card he gave her was as shown in Exhibit #4.

[52] A second meeting occurred the following week. Mr. Taweel stated he phoned her after he got back from a trip to Dartmouth. She said she would meet him the next day, same place and time. He asked if she wanted him to pick her up and she said no.

[53] They met the next day and it was overcast. They were walking on the beach, and it started raining, so they left in his car. It was a downpour. He pulled over, and shortly after they started kissing again, with him touching her private area. He said again one thing led to another. He testified she removed her jeans and her footwear. He continued playing with her private area, to the point where she had

an orgasm. That was it he said, it was raining real hard. She put her clothing back on.

[54] After that they talked a "little bit", he mentioned he was flying back to Toronto on a Sunday. She asked, he said, if he would be coming back to the beach. He was not sure and said, "if you like, I'll give you a call". He asked if she wanted a drive back to the cottage and she said no, and got out of the car.

[55] Mr. Taweel confirmed there were no other contacts with the Complainant in PEI. There was no oral sex, vaginal sex, no attempt at intercourse.

[56] Mr. Taweel gave evidence as to the walking distance from the front door of the cottage […] to the beach. He said he checked himself in September 2013 and that it was a […] walk non-stop to the beach area and […]from the front door of the cottage to the main beach. The evidence of the Complainant was that it was less than 10 minutes.

[57] The Accused gave evidence about information that was available on him through the website at UNB where he published a paper, his senior report to obtain his Professional Engineering degree. The report deals with concrete construction in the Middle East and its deterioration. He said to "Google it", you need a UNB

ID, but it is physically available to the public. He denied that he spoke to Ms. L. about this, contrary to her evidence. That is, the Middle East.

[58] Mr. Taweel gave evidence in direct that he had further contact with the Complainant. He stated she phoned him a few times in Toronto in September, 1991 at his residence. He said she called and he answered. It was just the once but she called another time and left a message with Alexander Kennedy or Sandy Kennedy, and left her home phone number. They talked about Second Cup, his store at the Halifax Shopping Centre and that he'd possibly be back to look in on that.

[59] He testified she asked if he was coming back, she had his business card, and that there was further in person contact, once, in Dartmouth.

[60] After he decided he needed some time, after job interviews and because he and his father had an upcoming birthday, he flew back to PEI, where he needed to get his car. After spending time with family and friends he headed to Dartmouth, where he saw his sister, and check on Second Cup stores. He gave S. L. a call. He said they got together one time, and then he went back to Brampton.

[61] In terms of how they met in Nova Scotia, Mr. Taweel testified he contacted her shortly after arriving in Dartmouth, and that it was her who told him where and

what time to meet her. He said she knew about his sister's place, and he asked her if it would be okay to go there. He was asked how he knew how to locate her and he said he had her number from when she called. He said she told him to call her late afternoon, after school.

[62] Mr. Taweel testified they went to his sisters, and when they got there they had chatted, about school, Second Cup, her possibly working there, when he'd be coming back to Nova Scotia. He said he was not sure, he had started working full time or would be. She asked if this was where he stayed when in Dartmouth and he said yes, in a spare bedroom in the basement.

[63] They went downstairs, sat on the bed, she sat down and shortly thereafter she got up and said she was going to the washroom. He testified it took her a while to come back down and when she did, she asked him to take her home and he did.

[64] Mr. Taweel gave evidence that afterward she just said good luck with the job and have a safe drive back. Nothing of a sexual nature happened, and it is the last time he saw her. He testified he was driving the same vehicle as in PEI.

[65] He stated that Ms. L.'s evidence about what happened there was inaccurate. He denied it and he denied writing letters to her. He was asked whether Ms. L. told him she was in Junior High, he answered no.

[2]

[66] He finished his direct examination by stating the entire encounter in Nova Scotia lasted less than an hour. He was asked by his counsel if he ever disguised his voice when he called in PEI or in Dartmouth, he answered no.

[67] Further, he denied inviting her to come to Toronto, to fly there. He testified, that did not happen. He was shown Exhibit 4e which is the last in a bundle of phone records. Entry 10 on the last page shows a phone call at 11:01 to (902) […]. He was asked if he recalled phoning her on that date, November 1, 1991. He said he didn't recall, but stated, he obviously did. He concluded his direct, by stating he had no criminal record.

[68] In terms of credibility, Mr. Taweel, as his counsel argued, did not attempt to relate every detail to the court and that this is understandable. It was he who provided evidence, through phone records and other information which resulted in the year in the indictment changing from 1990 to 1991. Mr. Kennedy gave evidence in support of Mr. Taweel's position, which is that it was she (the Complainant, S. L.) who was pursuing him, as evidenced by her phoning him several times in Toronto.

[69] Mr. Taweel has no criminal record, which impacts favourably on his credibility, to an extent. His counsel has argued that Mr. Taweel's evidence was

clear and straightforward. If believed by me as the trier of fact, he is entitled to an acquittal as outlined in Step 1 of **W.D.** I may accept all, part, or none of his evidence or that of any witness.

[70] His evidence that he conducted himself when with Ms. L. in an open fashion is reasonably consistent with his evidence, although his evidence of PEI showed they were back away "in the dunes". There is no evidence that he introduced Ms. L. to any friends whom which it appears he regularly kept in contact with.

[71] The Crown argues it makes no sense that nothing happened at Jeanette's. It is in my view, too presumptive to suggest that, if an open view of the evidence is to be taken, which it must. It could be he was merely being respectful of her request to leave. Mr. Taweel indicated in cross examination that he had hoped that something may evolve from the meeting in Dartmouth of a sexual nature.

[72] He stated that she wrote him several letters. The Complainant stated she could not do so, because she would have difficulty finding a stamp, or words to that effect. On its face this is supportive of his evidence.

[73] The Crown submitted further that Mr. Taweel was being less than candid when on cross examination he, all of a sudden, added that there had been a "long walk" on the beach with Ms. L. before they engaged in any sexual activity. This

was added in cross examination when the issue of timing arose, but he failed to mention the "long" walk in his direct evidence.

[74] To be fair Mr. Taweel did indicate in direct that she suggested that they would go for a walk, and re-iterated in cross that that is what they had planned to do.

[75] None the less, I think the introduction of the word "long" was introduced by him at an opportune time. The Crown's position on this point has merit.

[76] Similarly, I have some difficulty accepting that Mr. Taweel would be unable to determine a place to meet with S. L., due to him not being familiar with the geography of Dartmouth. He acknowledged that he had lived there previously for 6 months. When being cross examined he qualified this by his not knowing the total area well enough, only certain areas where he travelled. I concur with the crown, that his evidence on this point was weak.

[77] Along those lines there is an inconsistency in Mr. Taweel's evidence related to the Complainant deciding where and when to meet. Although he was fairly adamant it was her who decided, and he remembered that, he was unable to recall or say, where they met.

[2]

[78] In addition, when asked on cross what was discussed during their long walk he could offer nothing. He couldn't estimate how long, except to say it wasn't 10 hours.

[79] There are additional factors which I find are relevant in assessing Mr. Taweel's reliability and credibility. During cross examination he struggled on several occasions, giving vague accounts of what had transpired. For example, he was asked about his direct evidence, that he and the Complainant sat side by side on the blanket. First he said "yes, that's what I remember" and when pressed somewhat, said "yeah, I don't think we'd be sitting… yes that is what I remember." Then along the same line of questioning he was asked about him having his arm around her, and was asked to confirm his direct evidence and said "I believe it was around her comfortably. I don't know it was there, there, or there." He was then asked pointedly, "Was your arm around her or was your arm not around her?" He said, "Eventually, it went around her, exactly where, but eventually it went around her," he said.

[80] There was as well a lengthy exchange on cross examination, when Mr. Taweel was asked whether the Complainant touched him in any way. Without reading the entire exchange:

[2]

Q. …And did she touch you in any way?
A. Other than that?
Q. Uh huh.
A. And kissing?
Q. Uh huh.
A. No.
Q. Okay, so…
A. Not that I can remember no, she may have but I don't remember.
…
Q. Okay, so you can't describe all of the touching that took place within this physical encourter, is that what you're telling us?
A. No, I can describe that because I, I remember that, that's why, that was very clear to me.
…
Q. Okay, but there are other moments that took place that you can't describe, is that true?
A. That's true.
…
A. …And so, not to belabor this but I'm genuinely confused, do you remember all of this incident or do….are you unsure whether you remember all of this incident?
A. No, I remember what I'm telling you.

[81] There are other instances when Mr. Taweel was hesitant when being asked about which hand or hands of hers guided his.

[82] I mentioned his evidence as to the geography of Darmouth. During the following exchange he admitted to not being truthful:

Q. You spent six months living in […] in Dartmouth, yes?A. From […] down to Alderney Gate for MicMac Mall or Halifax Shopping Centre, that's it.
Q. Right, but when you say you don't know the geography of Dartmouth, you actually lived in Dartmouth for six months during the previous year, isn't that true?
A. Yes.
Q. Okay, so saying you don't know the geography isn't exactly true is it?
A. Correct.

[2]

[83] Then there was an exchange regarding him picking her up in Dartmouth as follows:

> Q. You agreed to meet. And you did in fact meet?
> A. We did.
> Q. You drove and you picked her up in your car?
> A. Yes.
> Q. And where did you pick her up?
> A. Where she told me to meet her.
> Q. Alright, do you know where that was?
> A. No.

[84] In observing Mr. Taweel I noticed there were times when he was uncomfortable. As a result, he "stumbled" and was visibly shaken. This was when he was asked whether he was a gregarious person. He had difficulty saying it. The Crown Attorney was kind, but my impression was it was more than just trying to pronounce a difficult word.

[85] He seemed uncomfortable when it was suggested that even though it was a quick trip to Dartmouth in September, he made time to see the Complainant.

[86] There are other instances. A witness must not be assessed merely by selecting certain portions or entries. Mr. Taweel's evidence as a whole must be considered. For the amount of time Mr. Taweel spent giving testimony, I found, with respect, that contrary to his counsel's submission, Mr. Taweel's evidence was

not clear and straight forward. He had difficulty and his evidence displayed inconsistencies.

[87] Beginning with his description of how he met the Complainant, while walking in water up to his waist, I did not find him or his evidence convincing or particularly genuine. He did not seem to have a good memory, and as I have said the manner in which he testified, left me questioning his credibility with respect to these events.

[88] In applying **W.D.**, I must consider the Defence evidence as a whole, even though the focus is on the evidence of the Accused. In addition to Mr. Taweel's evidence the Defence called Donald Alexander Kennedy to give evidence for the Defence.

[89] Mr. Kennedy and the Accused attended university together and were in the same residence at UNB in the late 70's and early 80's. They are both from the same hometown, Charlottetown. Mr. Kennedy is also a graduate in Civil Engineering, and has an MBA from Dalhousie. He still holds the designation of P. Eng. (since 1990) but he is a realtor in Brampton, has been for 25 plus years. He is married. He and his wife of 20 years have 3 children.

[2]

[90] At one time he and the accused were best friends, but the relationship has become more distant the last number of years.

[91] Mr. Kennedy gave evidence that during the period of the indictment, Mr. Taweel was staying as a boarder along with another man in Mr. Kennedy's home in Brampton, Ontario. All 3 were bachelors at the time.

[92] Mr. Kennedy remembered the Tacoma business card which contained his address, his home where Mr. Taweel was staying, which was 18 Peaceful Place, Suite 201, Brampton, Ontario. Suite 201 was merely the room in his house where Mr. Taweel was staying, so as to make it look, he said, as if this was a successful upstart business of Mr. Taweel's.

[93] He spoke of the two phone numbers, one regular phone and a second number which had a fax number attached to it. He said with his guests or renters he had one loose rule, that the fax number be used for long distance calls.

[94] He explained that he was able to locate the phone bills at the time in 1991, and for the months in question. These have been entered as Exhibits 5a - 5f. On these, he totalled what each of them, Mr. Taweel and the other man, Mr. Clarke, owed him in respect of their long distance calls. Notably, he referred to Mr. Taweel by his nickname, which was Mel.

[2]

[95] Mr. Kennedy then stated he did recall receiving in 1991, a phone call for Mr. Taweel by someone named S.. He did not recognize the name as such but did recall taking a message from a S. which was very brief. He described the message as follows: The caller asked is Stephen there. Mr. Kennedy answered No, he's not here, is there a message. The caller said yes, my name is S. and left a number with an area code beginning with 902, which he said was the same area code for his hometown of Charlottetown (PEI) and is the same for Nova Scotia.

[96] He said also that 2 or 3 messages were left on the answering machine from the same person. He said there could have been more, but there were at at least 2 on the machine.

[97] On cross examination Mr. Morrison asked him what would cause him to remember a brief message, not related to him in any way, that long ago. He responded by saying it was his hometown area code, there weren't many calls from there, and that the caller asked for Stephen, not Mel as he was known in the late 70's and early 80's.

[98] On re-direct he confirmed that the feature that peaked his interest was the caller asked for "Stephen", most often it was family who used "Stephen". He was asked on cross if he asked Stephen who S. was. He said he approached him and

asked, who is S. from PEI, and his response was she was someone he met on a beach in PEI. He was asked if the Accused said which beach, and Mr. Kennedy said he didn't remember. In direct he was unable to say whether any of the numbers on the bills represented a number for S. L.. He not to his knowledge, Mr. Kennedy said.

[99] The law tells us the best way to determine credibility is to identify inconsistencies in the witnesses own evidence and in consideration of the other evidence. It is important to try to resolve these inconsistencies and determine whether a finding of credibility can be made. This is a question of fact for which the standard is beyond a reasonable doubt.

[100] One inconsistency is the Accused's addition of the word "long" to the walk which he took on the beach with the Complainant on the second encounter in PEI. In fairness, neither he nor the Complainant recalled much of the conversations. The Complainant often referred to "innocuous chit chat". Nonetheless, it was the timing of the the Accused's evidence which causes me concern. He appeared to be adding to the time that he spent with the Accused prior to sexual activity, or attempting to in his evidence given on cross examination.

[2]

[101] Similarly, with regard to Dartmouth and his statement of not knowing the geography, the Complainant stated in her evidence that she still needs a map to get around Dartmouth, yet has lived there all her life.

[102] Inconsistencies can be major or minor. The Accused has denied touching the Complainant in Nova Scotia. The Crown says this makes no sense. However, I remind myself, that Mr. Taweel is presumed innocent. The standard of beyond a reasonable doubt is a high standard.

[103] I admitted narrative evidence, pertaining to the alleged events in PEI. It is important to reiterate that the guilt of the Accused may not be inferred from either disposition or bad character. It was compelling to me that Mr. Taweel's evidence lacked detail. I had the distinct impression he was not sure of his testimony, I say this knowing that one must be careful not to place undue weight on demeanour alone. However, I do not assess his evidence based on demeanour alone. I am persuaded that he has adopted the narrative of the Complainant and this is why he presented as he did. His evidence was his not his own story. This does have a negative impact on his credibility.

[104] In terms of Mr. Kennedy, he did present as credible. It is entirely possible that he could remember a phone call after twenty years. He says he was surprised

when the caller used the word "Stephen" but yet that was the name on the Tacoma business card which invited people to call Stephen N. Taweel at Mr. Kennedy's own residence, at the two contact numbers, for what was then a purported business, Tacoma Construction. Further, it is one thing to remember a phone call, but Mr. Kennedy remembered more than that. There were at least two messages on the answering machine, he said, and there could have been more. Mr. Kennedy remembers more than the phone call.

[105] This does not seem plausible after twenty years. It could be he is mistaken. He is at present a good friend. In fact, he has been a lifelong friend of the Accused since university. He is not an independent witness in my respectful view. His evidence could be accurate, but I do not find it reliable because it strains the boundaries of being believable, to the point that I do not consider it reliable.

[106] Mr. Taweel has denied touching of the Complainant, and therefore, he has in effect denied all the elements of the offence of sexual assault under section 271. Those again being 1) touching, 2) touching of a sexual nature, and 3) the absence of consent.

[107] If I believe him, I must acquit him. Included in that is a consideration of the defence evidence, including that of Mr. Kennedy. Based on the foregoing, I am

left to conclude that Mr. Kennedy's evidence does not assist Mr. Taweel to any great extent.

[108] The Accused has no criminal record and that counts in his favour in terms of his credibility. His evidence as to the timing of the alleged events in 1991 I am prepared to accept, because there is corroboration for it in the form of the telephone records and the Tacoma business card. The corroboration, in fact, that we have is that of Mr. Taweel phoning the Complainant. Here I refer to the phone call of November 1, 1991. On the whole of the evidence there was no contact other than during one summer and fall of 1991. The Complainant admitted she could be mistaken as to the year, but didn't think so given that it was the only year her parents were not in PEI, as they were in Dartmouth building a house. I am prepared to accept that the Complainant is mistaken about the year, and that Mr. Taweel is correct. The Crown has as much as acknowledged same in its position which resulted in the amendment to the indictment.

[109] As to the rest of Mr. Taweel's evidence, I do not believe it. I have explained that I found he was uncertain and that his evidence was not consistent. I found there were difficulties and his evidence was not straight forward. His memory was

poor, and it did not seem to be his own story. Therefore, I am not obligated to acquit him under the first step in **W.D.**

[110] As to the second step outlined in the **W.D.** case, even if I do not believe the testimony of Mr. Taweel, but I am left in a reasonable doubt by it, I must acquit him. I have indicated that I have found the Accused's evidence to be without context or originality. It certainly lacked detail. In short, it was bland and devoid of any character that would give it a ring of truthfulness. In my assessment, it is to a large extent, a fabrication and a poor attempt to adopt the narrative of the Complainant, but in a manner that would be consistent with the theory of the Defence. In large measure that theory is based on evidence which the Defence says is not before the Court, but should be available to support the Crown's case. The Defence claims the Crown's case is thus unsustainable. These events did not unfold as the crown witnesses have stated.

[111] Applying the second part of the test in **W.D.**, even though I did not believe the testimony of the Accused, I must acquit him if the defence evidence, in particular, Mr. Taweel's, leaves me with a reasonable doubt. For the reasons I have stated, it does not. He is, therefore, not entitled to an acquittal under the second step in **W.D.** I turn now to the third step and whether the Crown has

established the guilt of Mr. Taweel based on the evidence I do accept following a review of all of the evidence.

Issue #3 - Has the crown established the guilt of the accused, Mr. Taweel based on all of the evidence?

[112] The Crown called as witnesses S. L. and the investigating officer, Lisa MacDonald. The main witness of the Crown was the Complainant, S. L.. Her evidence was the most relevant and was subjected to a lengthy and vigorous cross examination.

[113] Ms. L. described herself as an introverted young teenager when these alleged events occurred. She was timid and not outgoing. She was, she said, socially underdeveloped; dating boys and kissing, she said, none of it was on her radar. She stayed home and was a voracious reader. She clung to her home. She was in band, played the […]. She was not involved in sports or after school activities. She did not go to her prom. No one called for her.

[114] Ms. L. recounted meeting Mr. Taweel on the beach close to her cottage in […]. There is a difference in her evidence and Mr. Taweel's as to the walking distance to get there. She said it wasn't far, […]. According to his estimate which

he checked, it was longer, […]. She was 14 at the time, although she maintains she was 13.

[115] Ms. L. recounted a total of nine (9) incidents or encounters with Mr. Taweel. He is charged only with events in Nova Scotia. She testified as to three (3) meetings in Nova Scotia in the fall of the year they met. I have found that to be 1991.

[116] The so called PEI evidence is limited in scope as to its use. It was admitted to establish how the relationship began; and how it continued in PEI leading up to the incidents which occurred in Nova Scotia, as alleged by the Crown.

[117] The Crown says her passive behaviour there (PEI), continued when they met in Nova Scotia. The Crown submits her credibility is high, when this evidence is used to "carry the narrative" into Nova Scotia. Once again, I have concluded I may use it in that context and for that purpose, but not to infer guilt of the Accused.

[118] For this reason, I am not going to repeat or describe each and every incident, which the Complainant described in PEI. Her description was detailed and her recollection contained distinctive features of the events.

[119] She testified it was him who walked up to her and said "hi", and that he was casual and relaxed. They talked and he encouraged her to come to meet him at the beach the next day. She said he was persistent about this and her being timid and not knowing what else to do, she did return the next day. I have considered that she used the word "extracted" among other legal terms in her evidence, which I will later address.

[120] Following those meetings what took place were two meetings on the beach, the first in which "digital penetration" took place with his fingers in her. The second meeting at the beach she testified involved him taking her hand and using it to masturbate himself. They were back away from the beach, near the dunes.

[121] From there it progressed to drives for ice cream in his car and stopping at a field. Here she said things became more invasive. He positioned himself over her and placed his penis in her mouth, ejaculating on the grass.

[122] A few days later he took her back to the field, she thought it was the same one, but her recollection of this fourth encounter is not clear. There was again oral sex, with him over her. He laid me down on my back, she said. Everything was "pale" she said. This time she said he ejaculated in her mouth. She did not

remember this incident as well as the previously described one. She was underneath him.

[123] The final two incidents as alleged in PEI, occurred in his vehicle, according to Ms. L.. Both involved him having sexual intercourse with her. Once again there was detail, it was raining hard. These occurred at or near a dirt road, not far from […], at or near the old campsite. Here we have the openness feature, as submitted by the Defence.

[124] The first of the two, she described as him pulling the car over, crawling over to her side and readying himself, with a condom and penetrating her vaginally. She was not sure if he ejaculated. It was raining hard, she walked back. She was asked in cross, how he did this. She explained he placed his knees on each side of the seat over her.

[125] There was one more occasion, the sixth (6) which again happened in the car. This time she said there had been an agreement to meet. It happened within a few days, as had the last few. He penetrated her vaginally like he did before. It was in the afternoon. He used a condom and again she was unsure if he ejaculated. It didn't seem to last long. This time she testified she understood what he wanted

and said "she helped him". She was less passive and more co-operative it seems on this occasion.

[126] I have recounted these events not for the purpose of assessing whether they are true, as they are not admitted for that purpose. This evidence was admitted for purposes, other than to show any propensity of the accused or to prove bad character.

[127] Narrative evidence can be used for multiple interrelated purposes, including to advance the story, to put other evidence (in this case the Nova Scotia evidence) into context, so that it is understandable, and to assist in evaluating the probative value of evidence and the credibility of a witness. (**R**. v. **Assoun**, [2006] NSJ 154).

[128] Mr. Taweel, therefore, if I may say, comes to Nova Scotia with a clean slate.

[129] In terms of Ms. L.'s evidence, it provides a useful framework for me as trier of fact to assess her credibility and to assist me in understanding the relationship between she and Mr. Taweel (much of which is denied by him) and the context within which the alleged offence in Nova Scotia is said to have occurred.

[130] As it was, in terms of the relationship described by her, it was he who was initiating contact, not her. He almost always called she said. She felt trapped,

scared, perplexed, afraid, unable to extricate herself. She was confused and uncertain. She was terrified she said. The fear she said came from statements she said he made to her that: 1) she was not to tell anyone; and 2) she would get in trouble. Each time he told her this or reminded her. This is how she described the relationship and the context of her evidence of the PEI incidents, leading to their contact in Nova Scotia in the fall.

[131] In terms of her narrative evidence, her recall of those events was vivid and distinctive. For example, in the beach incidents she described him as having the towel or blanket. She recalled the blood on his hand and his surprise. She was herself looking out at the water and in shock. She recalled which of his and her hands were used to perform the masturbation.

[132] In terms of conversation, not much was said, "innocuous chit chat" she often stated. He was gregarious, she was shy.

[133] In the field she recalled the bright sunny day, the green grass, the flowers white and yellow, and his smell. There was the gold neck chain flashing in the sun, and the crow. She felt like she was choking. She did not recall the second field incident as well.

[2]

[134] In the car (the 5th incident), she remembered he penetrated her briefly without a condom at first, and it was kind of a blur. She recalled him coming over to that side of the car. She was not as scared as before. She felt it was too late. That she would go to hell. She helped him more in undressing, she said.

[135] At this point, I will state I have not yet dealt with the cross examination of Ms. L. or the Nova Scotia evidence of Ms. L.. Further, I am aware of the numerous inconsistencies at play between the Crown and Defence. I must make every attempt to resolve these which include: whether there was any sexual activity; whether there was a threat; if I conclude there was touching, what does her acceptance or any co-operation have on the issue of consent. Mr. Taweel is entitled to have any and all defences considered by the court. (**R.** v. **Ewanchuk**, (1999) 1 S.C.R. 330 at paragraph 55.)

[136] In terms of reasonable doubt, what about the openness, his arm being around her on a public beach, him phoning her, did she provide her phone number, why show up, why not bring an adult, was it surreal, did it happen to her?

Nova Scotia Events – as Alleged

[137] Ms. L. testified that in the fall of the year they met, Mr. Taweel picked her up and took her to his sister's house on […] and had sex with her, against her will. This occurred on a Friday, a second Friday and then the following Saturday, beginning in late September and ending in October. He penetrated her vaginally with a condom and on one occasion she performed brief oral sex on him. This was the second meeting where she said she briefly pulled back but then remembered the field and went ahead and did it.

[138] Once again, Ms. L. testified to these events, in great detail. On the first occasion he showed up at her school, "around the corner from it". She was shocked and didn't know what to think or do. She had no jacket. She got in and they went to what she now knows was Jeanette's house. She remembered it was not in Halifax nor was it across the bridge. It was not a long drive.

[139] She described the house, the colour, the steps, but it later turned out that she was remembering the house next door, she said. She testified there was no one there and remembered the silence of the house. They went downstairs. She remembered the patterns on the sheets on the bed. She described the room and the stairs leading down to it, the upstairs a bit as well.

[140] She remembered a window at the front of the house, which was covered over the first time there. It was in the basement at the front of the house. She had the impression no one lived there.

[141] She described Mr. Taweel while there as very happy and at ease. He kissed her and touched her, first over her clothing, and then underneath and was touching her all over.

[142] She said he took off his clothing. She was asked if she assisted him and she said "I don't know, I don't remember doing so". At or near this point in her evidence, the Complainant got a bit confused and began to mention the accused bringing her head down to his penis. It was late in the morning of her testimony and the Court took a lunch break.

[143] Ms. L. returned after lunch to resume her testimony. She explained her blood sugar had been low and she had been a bit confused before lunch as between the first and the second incidents in Dartmouth, as to when the oral sex occurred.

[144] She continued her testimony of their first meeting, stating he had left his boxer shorts on when he first got in. At some point he took them off. She remembered after he penetrated her, he pulled out, removed his condom and ejaculated on her stomach.

[2]

[145] She was asked who initiated the contact and she said Mr. Taweel. She was asked whether she touched him and she said she was uncertain. Notably she was further asked by Mr. Morrison, a series of questions which he asked and she answered following her testimony of every incident, which she described and relayed to the court. Those questions were as follows, (I am paraphrasing):

1. Did you discuss this beforehand? No.
2. Did he ask to touch you? No.
3. Did you invite him to touch you? No.
4. Did you invite him to engage in sexual activity? No.
5. Was there conversation about sexual activity? No.
6. Did you want it? No.
7. Did you enjoy it? No.

Generally those were the answers given.

[146] She was asked how it made her feel? She said it was inevitable, it was not something she could escape from. She felt resigned to it, she was perplexed. She began to think it might be normal for people growing up. She testified she was not clear on how long, the first meeting in Dartmouth, lasted but it was not dark when she got home.

[147] She further testified that Mr. Taweel suggested a name of a friend for her, M.B., and for her to say that is who she was with. She said she did tell her mother she was at M.B.'s. When asked why, she said she was scared to tell her where she actually was. She said, "I thought I would get in trouble".

[148] The Complainant testified that the second time was several weeks to a month later. It was in October, and not that cold yet. She said there had been telephone contact, him phoning her. She never phoned him. She did not have a memory of providing her phone number to him, but said it was always listed. As to whether he still made his voice sound younger, she said he did.

[149] They also talked about travel, shopping, clothes, describing him as a clothes horse. She said he had a couple of close male friends. She spoke on the phone with him, she said because she was at a loss, she didn't know what to do. Looking back she said that was foolish because if he told on her, he'd be telling on himself.

[150] I am not satisfied it is necessary or even helpful for me to repeat the details of the Complainants testimony for these meetings, except to highlight certain portions for this, my decision.

[151] She said she had little social skills and was bewildered. He was pleasant and personable. He mentioned or brought up the word, "longray" – meaning lingerie,

she said. She was certain this was on the phone. On second occasion he was there as before, when she came from school. They went to the same house.

[152] He was, she said, kissing and touching her before they even went downstairs, touching her "all over", she said. She remembered trying to keep her balance. On this occasion, he directed her head toward his groin, they were lying down. She resisted at first she said and then remembering the field did, she said, what he wanted me to do, perform oral sex on him. After that she said he put on a condom and penetrated her vaginally, and this time he did not "pull out".

[153] She said she may have touched him, because it was what he wanted her to do. She took no pleasure form it. She has always been a passive person. She went along because she didn't know what else to do. She was not as scared as before she said, but she felt trapped. There was a conversation that she would not tell anyone and to say she was playing with friends. She gave her mom the same response about playing with M.B. and her mother didn't say anything. There was little conversation she said between her and Mr. Taweel, and if she said anything, it wasn't much. She answered "no" to the same series of questions from Crown counsel. They did not discuss it, she did not ask, invite, want or enjoy the sexual activity.

[2]

[154] It was still light when he dropped her off. She hadn't been home long when he called for a third meeting, the next day, a Saturday.

[155] On the third meeting it was the mid-day. They went back to Jeanette's, and there was little recall of conversation on the way there.

[156] They went downstairs and Mr. Taweel seemed excited again, even on the stairs. She said he had sex with her vaginally and did wear a condom. At one point he accidentally tried to penetrate her anally, but it might have been an accident, she said. He wore a condom and she was unsure of ejaculation.

[157] She noticed at this time, a couple of things. He "teared up", she said, as she said he did on a previous occasion in PEI. Also, lying there she saw the window behind him, which was not covered. There was therefore, "a bright bar of light" which she saw behind him. She said he went upstairs once or twice. There was no conversation about having it, no invitation, nor did she ask to engage in the sexual activity. Same series of questions from the Crown, same answers given on her part.

[158] She was asked whether she reciprocated? She said, "I don't think so. I may have touched him like before." She was asked again what was said. At that point, she said, not much of anything.

[2]

[159] Generally she said, he was quite quiet when they were doing something. She said she would not describe their contact as a relationship. She concluded her direct evidence by testifying that the three (3) encounters in Nova Scotia, occurred in September and October, but not in November.

Cross – Examination of Complainant, S. L.

[160] Ms. L. was thoroughly and expertly cross examined by Defence counsel for Mr. Taweel. It was lengthy and at times vigorous. I might say it was also courteous and professional.

[161] There were some telling and compelling features in the evidence given to the questions asked.

[162] Ms. L. was challenged on her memory of over 2 decades ago and the topics she and Mr. Taweel would have talked about. She described the talk as mundane, innocuous, "water cooler talk", she said. The suggestion was it could have been more than that, and that she may have participated in the weightier topics of a 32 year old and a 14 year old in a sexual relationship. She flatly rejected that suggestion. In doing so, she spoke of being just a kid, with […]. She said there is a basic pattern that when an event is traumatic, there is a heightened memory.

[163] She was asked what Defence counsel described as a very important question in relation to the "don't tell anyone" comment. Defence counsel wanted to know if it was expressed on every occasion that they met. She replied that from what she recalled "yes" that it had been. She was then asked "how confident she was in that answer". She further replied, "as confident as I can be, yes, sir". It was then suggested to her, that it wasn't accompanied by an objective threat. She replied, "I don't get the impression your client is a violent man".

[164] She was earlier asked if she felt she was 100% sure if he said don't tell, and you'll get in trouble, on the second contact, in PEI. She gave a similar answer. She was then pressed about it being 22 years later, and how could she remember on that occasion. She said it was "traumatic". "That's why", suggested Mr. Knox, "you may be inaccurate on this occasion, am I correct", she replied, "I don't know." This suggested she was not 100% sure about that occasion.

[165] Just before that Mr. Knox asked her if his (Mr. Taweel's) tone that was menacing. She said it was not the tone that was menacing. Mr. Knox then suggested the words were not menacing, she answered, "I felt they were".

[166] In addition she was asked why show up? She answered, "I didn't know what to do, I didn't feel I had a choice". It was further suggested to her,

"Apparently you didn't know how to say no? You didn't know how not to talk on the phone?" She answered, "I just felt I had to go along and go with the flow. It doesn't make sense for an adult looking back on it, explaining when kids are traumatized they don't know what to do, they are intimidated." She was, of course, not a child, but a young teenager.

[167] She was challenged again by defence counsel about this answer, in that she was not asked about "them" (meaning kids in general), but about her. She replied, "I was intimidated". She then replied that it was fair for her to appeal to what others may experience, as the initial suggestion from defence counsel was whether objectively, it seemed reasonable.

[168] This was in my view an intelligent and insightful answer. She was unshaken in her response, while explaining the content for her answer. Importantly, she did answer the question about herself. She said she was intimidated.

[169] In assessing the evidence I must not focus piece by piece, but rather on the evidence as a whole. These were but some examples. I have carefully considered the evidence given on cross-examination and in direct.

[170] To me, some of the more compelling features of the Complainant's evidence was given in direct testimony. I will reference several which I found to be compelling.

[171] First, she was asked to explain their relationship? It was not a relationship, she said. He was 20 years my senior. What kind of a relationship could there be, he sexually abused me.

[172] Second, she was asked by Mr. Morrison, did you want to meet him? I never thought of it in those terms, she said, I felt I had no choice.

[173] Once again in cross-examination she was asked, did you think in Dartmouth, that this was happening to someone else, not you? She answered, I never thought (they) were happening to someone else. Then again she was pressed "You said in PEI…". Her reply was, I said I felt "as if" it were happening to someone else, "I felt numbness, and not able to wrap my head around it", or words to that affect.

[174] Again, she was asked, in Dartmouth, did you ever feel it was happening to someone else, not you. She answered, "sometimes yes"…and then stated unequivocally, "I knew it was happening to me."

[2]

[175] This is not a credibility contest. It is not a matter of measuring the Defence evidence or the Accused testimony against that of the Crown. It is, however, not improper to assess the evidence by looking at the other evidence presented, including the Complainant's testimony. (**R**. v. **Keyes**, 2013 NSSC 25)

[176] I have been referred to and reviewed the case of **R.** v. **Filion**, 2003 Carswell Ont. 3286, with respect to assessing credibility and reliability. In particular, I have reviewed and paid attention to paragraph 27, and factors such as whether the witnesses, seem honest, and seem to have a good memory. Does their testimony seem reasonable and consistent, or is it contradictory within their own testimony or with others? What do others says about the same events? The witnesses' manner of testifying may be an important factor.

[177] An important measure of credibility is to identify and reconcile, if possible, inconsistencies in a witness's testimony, within their own evidence, including statements earlier given and against other testimony or, against objective evidence. It is important that these be addressed, especially if they are material to the allegations. If they cannot, it may give rise to a reasonable doubt as to whether the allegations have been proven beyond a reasonable doubt (**R**. v. **Keyes**, para 6.)

[178] I refer to **R.** v. **White,** (1947) 89 CCC 148 (SCC), where Justice Estey of the Supreme Court of Canada observed;

> "It is a matter in which so many human characteristics both strong and weak must be taken into consideration. The general integrity and intelligence of the witness, his power to observe, his capacity to remember and his accuracy in statement are so important."

[179] And also the statements of Saunders, JA. of the Nova Scotia Court of Appeal in **R.** v. **S (D.D.),** (2006) 207 CCC(3d) 319 (NSCA):

> "Human nature, common sense and life's experiences are indispensable when assessing credibility, but they cannot be the only guide points. Demeanour too can be a factor taken into account… when testing evidence, but standing alone it is hardly determinative… one of the best tools… is the painstaking, careful and repeated testing of the evidence to see how it stacks up."

[180] How does the evidence of the Complainant, S. L., stack up here? After a long and arduous cross examination, I have found there to be but a few questions or inconsistencies, which have caused me, as the trier of fact, concern.

[181] **Stamp** – the Complainant stated in cross examination that she would have been unable to write letters to the accused because she would be unable to obtain a stamp. At 14 years of age this does not appear to make sense.

[182] **Toronto** – the Complainant testified that Mr. Taweel wanted her to fly up to visit him in Toronto. Yet, by her own evidence she was quite introverted. The Defence points out this evidence is more consistent with his description of her as an outgoing, attractive 16 year old.

[183] **Phone number** – Mr. Taweel says they exchanged phone numbers. She said he almost always called. It is clear he had the number but she had no recollection of giving it. The Defence has argued she did, which shows she was a willing participant in the relationship.

[184] The stamp on its face is less material, although it does fit with the Defence theory that she was made to look younger, similar to her building a sand castle on the beach, around the time they met. She did, however, throughout her testimony say how sheltered she was and explained on this point that when she was in university, her mother walked her to the bus stop. She lacked interpersonal skills and was quite immature for her age, was the general tenor of her evidence.

[185] Mr. Taweel asking her to fly to Toronto is more significant in that he maintains she was outgoing. It makes sense he would make that request to a more mature person with life skills, and to a person older than 14. It does then support his evidence that the Complainant was like "night and day", comparing her then

and how she presented in now, in Court. Even though he denied doing so, it casts some doubt on the Complainants credibility.

[186] This evidence is more difficult to reconcile. In terms of its relevance, he says, he didn't ask her to fly to Toronto and her evidence was, he did and she could not do such a thing. The passage of time may be a factor, including the perception of S. L., who is recounting events, which she says occurred when she was very young. If one considers the topic of "lingerie" that too could be said to be a topic which would be raised with a more mature person, as of course is the whole subject matter before the Court. In that respect, there is some consistency in in her evidence.

[187] Phone calls were an integral part of her evidence and the entire testimony. When asked whether she gave him her number, she was unsure. If she did, she attributed this to her being naïve. She spoke of a "power imbalance". She testified he was an older, larger man of stocky build, a persuasive, outgoing person while she was lacking social skills. She never resiled from being confused, bewildered and naïve, even during the first meeting, when she said it didn't seem right to say "no".

[2]

[188] Credibility is a question of fact to be determined beyond a reasonable doubt, looking at the entire evidence, and not individual pieces. I am satisfied that S. L. is a credible witness. She was cross examined in great detail by experienced counsel. Considering the number of questions and the exhaustive nature of her cross examination, she came out relatively unscathed. Yes, there were inconsistencies, which I have alluded to and attempted to resolve. Overall her general credibility, stacked up well. It is not a standard of perfection or one that requires 100% accuracy. Her answers were often intelligent, but they also seemed honest.

[189] The Court took particular note of this on the question related her first pulling back and then proceeding with oral sex on the second meeting alleged in Dartmouth. She exhibited what one would expect to be a certain amount of emotion, reflection, sincerity and regret. She paused and calmly answered "Yes, I did it briefly". She was unshaken.

[190] In terms of her reliability she appears mistaken as to the year of the events she alleges or possibly so. Given the weight of the evidence on this point, and the Crown's position, I have found she was mistaken. On this she was also cross examined; is it possible she is mistaken as to other events? She testified it would

be ridiculous to conclude from this, that her knowledge on all aspects of the events is inaccurate.

[191] Her manner of testifying had, in my view, a proper and not a skewed perspective. For example, in the first field incident, she let on the crow was with her, but she said, of course it was just a crow and she knew she was alone. This impressed me as a balanced answer, not one designed to invent.

[192] Her recall of the extraordinary, was of itself extraordinary. Perhaps, this is attributed to her self-professed high IQ. I concur with defence that some expert evidence of […], as a diagnosis, may have been helpful. On the other hand, as trier of fact, I am able to weigh the testimony along with any explanation as to the particular traits of the Complainant, in all respects. This includes, her explanation as to difficulties with intonation and or social interaction, some of which she has said she had received coaching for. It is far from certain whether an expert's report would have benefitted the Court in that task.

[193] Based on what I heard, however, I am not left with a reasonable doubt as to the Complainants credibility. She was credible.

Reasonable Doubt Analysis

[2]

[194] I turn now to my analysis of whether the Crown has discharged its burden of proof beyond a reasonable doubt based on the evidence I do accept.

[195] I repeat that a finding of credibility does not equate to reasonable doubt. It may give rise to same on the evidence, but the burden remains on the Crown throughout the case and the evidence.

[196] Earlier I set out the essential elements which must be proven beyond a reasonable doubt by the Crown. These are the *actus reus* and the *mens rea*. In each of these there are elements. For the *actus* or the act of sexual assault to be proven, the Crown must establish that Stephen Taweel at the place and time in the indictment 1) touched S. L.; 2) that the touching or contact was of a sexual nature and 3) there was absence of consent on the part of the Complainant, Ms. L..

[197] I earlier stated I would clarify and expand upon the law in related to these elements. In **Ewanchuk**, at para 25 the Court (Supreme Court of Canada) stated that the first two elements, the touching and the contact of a sexual nature, are objective elements. It is sufficient if the Crown proves Mr. Taweel's actions were voluntary, that he voluntarily touched her and that it was objectively or reasonably, determined to be of a sexual nature. The Crown need not prove the Accused's state of mind, as to the sexual nature of his behaviour.

[2]

[198] Section 265(1) of the **Criminal Code** defines assault and s. 265(2) states that the section applies to all forms of assault, including sexual assault. A person commits an assault when without the consent of another person, he or she applies force intentionally to that person, directly or indirectly.

[199] The Court in **Ewanchuk** described the first element of sexual assault as "unwanted sexual touching" (para. 23). Further, in describing the unwanted aspect the third element of the act, the court described what absence of consent means. At paragraph 26, the Court stated that absence of consent is determined by looking at the Complainant's subjective internal state of mind toward the touching, when it occurred. In other words, whether S. L. consented is measured by looking at her own state of mind, what she was thinking at the time or times she stated Mr. Taweel touched her, as she alleges. The Accused's perception of her state of mind at this stage is not relevant.

[200] The Crown has submitted, the inquiry for me is, do I believe her when she says she did not consent. They submit further, that objectively the Crown has established on the evidence the first two objective elements, that he touched her and that it was of a sexual nature. The Defence has denied any touching, and

submits the Crown has not discharged its burden, entitling Mr. Taweel to an acquittal.

[201] The second main element of the offence of sexual assault is the mental element, called the *mens rea*. This is the intention of an accused to touch. Sexual assault is a crime of general intent. At paragraph 41 of **Ewanchuk** the Crown need only prove that the Accused, Mr. Taweel intended to touch S. L. in order to satisfy the basic *mens rea* requirement.

[202] The Crown submits I need go no further than the basic requirement of proof that he intended to touch her, because the Accused had denied touching her at all. They submit if I accept her evidence I must reject his. It is not open for him to say he was mistaken and mistakenly believed he had the Complainant's consent to touch her.

[203] The Defence is not obligated to raise a defence or prove anything. The Defence here spoke of the amendments to the **Code** in 1993, when amendments were introduced, pertaining to a new definition of consent. Those do not apply here because of the year alleged, 1991.

[204] Instead, the Defence submits that **Pappajohn** v. **The Queen**, [1980] 2 S.C.R. 120, would be the case, if the Court were to consider that defence, but they

didn't urge the Court to "go there". Mr. Taweel has denied touching the Complainant and has therefore not raised the defence of honest but mistaken belief. Even if I reject his evidence, he is entitled to all available defences, whether raised or not, even if they may appear solely from the Crown's case.

[205] This is evident from paragraph 44 of **Ewanchuk.** I will say as a practical matter, the defence has not been raised from evidence given by the Accused, whom denied all touching in Nova Scotia.

[206] The determinations as to the elements of the offence must be made on the whole of the evidence. For now, I have decided I will not deal with mistake of fact on the part of Mr. Taweel, but I will return to it in my decision.

Decision

[207] Considering the whole of the evidence we have that of Cst. Lisa MacDonald, who testified on behalf of the Crown. She identified Mr. Taweel in Court as the subject of her investigation. The Complainant earlier identified him as the person who allegedly sexually assaulted her.

[208] Cst. MacDonald is with the sexual assault unit of the Halifax Regional Police Major Crime, where she has been for 5 years. She had done research on the

property of Jeanette Taweel at […]. She had this information, but did not communication it to S. L.. Instead, she did ask S. L. to observe the Street on Google Maps, where the offence is alleged to have taken place. A Parcel Detail Report was entered as Exhibit 24 and 26, showing the property at […], belonging to Jeanette Taweel along with the original deed into her on April 24, 1990. There were further exchanges of the property between Jeanette Taweel and Stephen Taweel in 1999 and 2000 (Exhibits 2c and 2d).

[209] Cst. MacDonald was cross examined by Defence and asked about her electronic notes and her first contact with Ms. L. in Ottawa.

[210] Defence counsel further inquired as to whether phone records or telephone bills between the Complainant and the Accused were investigated. No. He inquired whether archived phone books for 1991 were obtained to see if the phone number or civic address had been published. Historically records had been saved, but things have changed since text messaging, she said.

[211] Part of the Defence submission was the lack of collateral evidence or corroboration in the crown's case, resulting in deficiencies in the Complainant's evidence. The Defence argued there were no relatives who came forward or were subpoenaed, no photos, and there were no phone records. These are things which

should have been made available, especially when, as the Defence argues, a witness, S. L., believes what they say, so as to assess the witness's evidence, objectively.

[212] The Defence questioned also, why did Ms. L. not bring an adult back to meet Mr. Taweel, as a buffer. The Complainant's response was, that would make sense now, but not as a very young person, unsure of her situation and feeling trapped.

[213] The Crown relied on the PEI evidence for a narrative purpose. In particular, they submit, it shows S. L.'s passive behaviour continued, when matters transferred to Nova Scotia. During the last incident in PEI, in fact, she stated she was less passive, and more co-operative. By that time she said she was resigned, and knew what he wanted.

[214] The basic thrust of the Defence is that it was S. L. who was in control and initiated the contact. She was the aggressor. I have difficulty with this theory, based on my observations of Ms. L. as a somewhat shy and reserved person, even as an adult.

[215] Once again, in reviewing the evidence as a whole, the Defence has no burden to meet, the burden is the Crowns'. He does not have to raise a reasonable doubt.

[216] I am obligated however to consider and analyze the Defence position. Another submission made on behalf of Mr. Taweel is how open Mr. Taweel was about the relationship. I discussed this earlier. There is some evidence to the contrary from the Complainant. That is, his arm being around her was when they were back and away from the beach. She was to call him "Uncle Stephen" in public. He introduced her to no one.

The Law

[217] The law in historical sexual assault cases invites the trier of fact not to get too drawn into credibility, but instead to review the entire evidence and assess its reliability. I have attempted to do that in this case.

[218] I have found Ms. L. to be credible, but more than that, I have shown that her evidence is reliable.

[219] Her evidence as to three (3) sexual encounters between her and Mr. Taweel at […] in Dartmouth, Nova Scotia was given in a clear and straight forward

manner. She described on each occasion the details of the sexual intercourse, the when and the how, remembering what occurred, the oral sex, the pattern on the sheets, the bar of light from the window. She was subjected to a grueling cross-examination, and in my view, her evidence "stacked up". It was largely unaffected on cross examination.

Inconsistencies

[220] There are inconsistencies before me that have not been completely resolved. The law is I must attempt to do so and if I cannot, that may give rise to a reasonable doubt or it may not.

[221] The Complainant stated Mr. Taweel had a different vehicle in Dartmouth she thought. He maintained he had the same one. She was accurate to originally identify his car as a sports car.

[222] I have already rejected Mr. Taweel's evidence, including, for example, evidence that she said she was 16 (instead of 13 as stated by the Complainant) and that she told him she was in Grade 10, not junior high, (as stated by the Complainant).

[223] There is a discrepancy as to the walking distance, which she said was les than […]. Mr. Taweel measured it and it was […]. For her this was an approximation, for him it was a measurement. The difference is arguably […] to the beach area. She said it was about […] kilometre which would likely not be […].

[224] The Complainant was aware of legal terms. Her thesis for her masters was in old or ancient law. The Defence submitted there was a complaint component to her, referring to the disciplinary file of Dr. F.. She thought he had been disciplined or reprimanded in some way. The agreement as to the sanction filed as Exhibit 6 was edited to insert "formally" before the word "reprimanded", in stating the physician was not "formally reprimanded". There could be therefore some basis for her evidence.

[225] There was as well, no relative, aunt or uncle who made inquiries. She said she was free to wander in the summer, it was safe in PEI. There was the contradictory evidence about whether they discussed the Middle East.

[226] I have considered whether these matters led to Ms. L. having a skewed perspective on the evidence. I have earlier given reasons to support my conclusion as to her credibility. I stand by those reasons.

[2]

[227] I have earlier said the issue is whether unresolved inconsistencies have raised a reasonable doubt. Again, knowing full well the Accused, Mr. Taweel, has no burden, I confirm they have not. Certain recollections may not be accurate, but I have assessed the Crown's evidence on the main elements of the offence as reliable.

[228] I can attribute no motive to lie on the part of the Complainant, nor do I think for reasons earlier given that her perspective is off balance or skewed, simply because for example, she uses certain terms, is aware of certain aspects of the law, or misjudged the walking distance.

[229] I do not think and so find that the Crowns case, was designed to make the Complainant seem younger. As the facts stand, she was young at 14. The Crown admitted in fact she was 1 year older than originally thought.

[230] For the reasons that follow, including corroboration of the Crown's case, these unresolved difficulties do not give rise to a reasonable doubt in my mind.

[231] I accept and concur with the Crown that there exists a significant amount of corroboration here. The Tacoma business card, her memory of the address "Peaceful Place" as incongruent for a construction company, her knowledge of a Second Cup, the records of KAJ Coffee Corp. records entered as Exhibits. Further,

that he was living in Toronto, that he had a sister Jeanette, who owned a home at […], conversations about Second Cup, that they met in […], PEI on the beach in July or August, they met again in Dartmouth, there was sexual activity, they drove in his vehicle, they went to the basement, he called her at her cottage in PEI, he made a call to her house in Dartmouth, there is objective corroboration of that in Exhibit #5. There is objective corroboration of […]as being owned by his sister. She was never taken to dinner, a movie or introduced to his friends.

[232] Ms. L. identifying the residence of […], without being told which house it was, is a compelling piece of evidence. She even remembered the house next door.

[233] When I consider the weight of the Crown's evidence and the force of the testimony of the Complainant in the context of all the evidence, including Mr. Taweel's and Mr. Kennedy's, I conclude that Crown has proven beyond a reasonable doubt that: 1) Mr. Taweel touched S. L.; 2) that the touching and his contact with her was of a a sexual nature, the details of which have been intimately described by her. I reject Mr. Taweel's evidence that he did not touch her, and that no sexual activity occurred in Nova Scotia on the dates as contained in the indictment. I reject the Defence suggestion that she was the aggressor in this relationship. The weight of the evidence points to the opposite conclusion.

[2]

[234] The third element of the physical act of sexual assault, is the absence of consent by the Complainant. It is the actual state of mind of the Complainant that actually determines this. It is a matter of credibility, as the Complainant, S. L., has asserted she did not consent. As the trier of fact, I should take into account the totality of the evidence, including any ambiguous conduct by the Complainant (paragraph 30 of **Ewanchuk**). If I believe the Complainant that she subjectively did not consent, the Crown has discharged its obligation. The inquiry then shifts to the Accused state of mind, in relation to the *mens rea*, the intention to touch her.

[235] I believe the Complainant. On the totality of the evidence, I am satisfied that nothing in her words or conduct, raises a reasonable doubt.

[236] In all of the three (3) occasions in Dartmouth, described by the Complainant where touching of a sexual nature took place, there was evidence from her that she may have assisted him or was uncertain if she did. She said consistently in her evidence that she was a passive person and not assertive. If she did touch him she said, it was what he wanted her to do.

[237] She consistently answered the series of questions put to her by the Crown counsel that she did not initiate or invite the contact, she did not want it, she did not enjoy it. Nothing she said brought it on and she did not ask for it. She said on

occasion she may have touched him. In cross examination, for example, she was asked "did you kiss him", she answered, "I don't know, I don't think so". She said she felt she had to submit in some fashion. She said she did submit but did not consent. She never resiled from this. She complied and that compliance continued from the events in PEI to Nova Scotia.

[238] Consent is not consent unless it is freely given. In the Complainant's own state of mind it was not freely given. She testified that she was confused, bewildered, trapped, not knowing what to do. This stands to reason given her social development or lack thereof. He was the older gregarious, stronger person, who took advantage, she said throughout her evidence. This supports her subjective belief. I believe her beyond a reasonable doubt when she says she was terrified. Her memory of these traumatic events has been heightened. The *actus reus* has been established beyond a reasonable doubt. (p 31. **Ewanchuk**).

Element of *Mens Rea*

[239] Sexual assault being a crime of general intent, the Crown need only prove that Mr. Taweel intended to touch S. L. (paragraph 41 **Ewanchuk**). I have found already that Mr. Taweel touched S. L.. In doing so I rejected his evidence that he did not. It follows logically that a person intends the natural consequences of their

actions. The Crown has established that Mr. Taweel's touching of the Complainant was voluntary. I am satisfied the evidence established this beyond a reasonable doubt. It is the only reasonable inference to be taken from the Accused's actions, in these circumstances. I find therefore, that the basic mental element of the offence of *mens rea* has been satisfied.

[240] The Crown states I need go no further to consider whether the Accused was mistaken and believed that Ms. L. was consenting to the sexual activity. He denied touching her, so it is not open to him to say he was mistaken and held an honest belief that she was consenting.

[241] The Accused however, is not obligated to raise any defence as such, although, they may do so. The Accused is entitled however, to have all available defences considered, even if they arise only from the Crown's evidence. Support may stem from the evidence before the Court, where there is sufficient evidence adduced by either Crown or Defence, the Crown bears the burden of establishing beyond reasonable doubt that the Accused knew the Complainant was not consenting or was reckless or wilfully blind as to whether she was consenting or not. (**R** v. **Robertson,** [1987] 1 S.C.R. 918.)

[242] For the conduct of the Accused to be culpable, for him to be guilty of sexual assault, there must be an absence of consent. Consent then is in integral component of the *mens rea* or the mental element, except this time it is considered from the Accused's perspective.

[243] The Accused's counsel challenged the Crown's evidence of *mens rea*, not by the Accused himself asserting an honest but mistaken belief is consent, but by the questioning in cross examination of the Complainant on whether she participated in the sexual activities, and thus was consenting; or whether through her words or actions she communicated her consent to engage in the sexual activity.

[244] In **Pappajohn**, the Supreme Court of Canada confirmed that the defence was available in Canada and that it goes to whether an accused had the necessary *mens rea*. The mistaken belief need not be reasonable, as long as it is honestly held.

[245] On the facts before me there is insufficient evidence that the Accused held an honest belief. It is open for the Court, however, to review the evidence and determine objectively whether Mr. Taweel could have held such a belief, but as is stated in **Pappajohn**, the reasonableness of any belief is merely a factor to be considered in whether the belief was really held.

[2]

[246] Is there evidence to support that the Accused, Mr. Taweel, held an honest belief that the Complainant, S. L., was consenting to the activity from, his perspective? No, there is not.

[247] Is there evidence to support that the Accused could have had an honest belief? Whether a belief is honest should surely come from the person who claims to profess it. The Accused, Mr. Taweel, has denied all touching.

[248] But the Accused need not prove anything.

[249] In an attempt to give the Accused, Mr. Taweel, the benefit of any defence, I shall consider that evidence, nonetheless.

[250] The Complainant gave evidence that at times she participated, because that is what he wanted. She was passive and said she submitted. At times she was not as scared but was still scared. She maintained she was compliant. She did not verbally express any aversion. Instead, she froze and was silent, unsure what to do. She said she found his words menacing.

[251] The best indicator of her fear was her actions. She did not tell anyone. As she herself said, silence is not consent nor is passivity or ambiguous conduct on her

part. She said she was resigned, it was inevitable and she was intimidated. I accept this evidence.

[252] The Accused's speculation as to what was going on in the mind of Ms. L. provides no defence.

[253] For the purpose of honest but mistaken belief in consent, consent means that Ms. L., in this case, had affirmatively communicated, by words or actions, her agreement to engage in the sexual activity with the Accused, which he denies altogether.

[254] I am satisfied on the evidence that the Complainant did not affirmatively communicate her agreement, she did the opposite. (**Ewanchuk** para. 49)

[255] Section 265(3)(d) of the **Criminal Code of Canada** states that no consent is obtained where the Complainant submits or does not resist by reason of the exercise of authority. I accept the Complainant's evidence that she was intimidated. His words were menacing to her. This amounted to coercion and the exercise of authority over her.

[2]

[256] I earlier rejected the evidence of the Accused and further reject any apparent or real defence of honest or mistaken belief which, in the circumstances, must come only from the Crown's evidence.

[257] I am satisfied that the Crown has established that Mr. Taweel intended to touch Ms. L. and that he did so knowing she did not consent and without an honest belief that she was consenting.

[258] In conclusion, on the evidence before me, I am satisfied that the Crown has established each element of the offence of sexual assault against Stephen N. Taweel, beyond a reasonable doubt. I find him guilty of the offence as charged.

_____

Murray, J.

[2]