

**TECHNOLOGICALLY-FACILITATED VIOLENCE AGAINST WOMEN:
SEXUAL EXPLOITATION CASE LAW**

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A. OFFENCE ELEMENTS

Sexual exploitation

s 153(1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who:

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

B. SELECTED CASE LAW

I. ALBERTA

i. 2013 ABQB 322

In 2013 ABQB 322, Mr. S was charged with a number of sexual offences against his daughter over a period of years. In one incident, shortly before the victim turned 15, S learned that his daughter was sending nude photographs of herself to online contacts. S then demanded that his daughter send him the nude photos. S was charged with making, possessing and accessing child pornography in relation to these photos.

At trial, S claimed that his daughter fabricated stories and set him up by placing pornographic images of herself on his cell phones and in his online album. He argued that she did this because he had cut off her phone use. As the Court noted, “As [the victim] had very few friends at school her phone was her only connection to the outside world, and she relied on it for the ability to phone, text, gain access to the internet, Hotmail, Facebook, and online friends. [She] had her phone with her at all times, and considered it her lifeline.”¹ Photos of S’s daughter, which met the definition of child pornography under the Criminal Code, were found on S’s phone and the Court rejected his claims that he was unaware of the photos.

S was ultimately found guilty of historic sexual assaults, making, accessing and possessing child pornography, but not guilty of sexual exploitation in relation to one specific incident. The decision on sentencing for this case has not been located.

II. BRITISH COLUMBIA

i. 2014 BCSC 1727

¹ 2013 ABQB 322 at 38.

In 2014 BCSC 1727 Mr. M was convicted on more than 24 charges, most notably: human trafficking (279.01(1)(b) and 279.011(1)(b)), sexual interference (s.151), sexual exploitation (s. 153), and sexual assault (s. 271). The case involved 11 complainants ages 14-18 at the time the activities took place. All offences occurred in Vancouver, Richmond and North Vancouver.

M took sexually explicit photographs of the complainants at different times and posted advertisements for their sexual services online from his cell phone and laptops. He attempted to coerce the younger complainants using drugs to facilitate their employment, and encouraged them to lie to their families so that they would remain out of trouble for their involvement with him. He travelled with a number of the complainants across British Columbia for the purpose of prostitution, and facilitated all of appointments through his cellular and computer devices. Nearly all of the victims came from poor socioeconomic backgrounds and were subjected to a host of degrading and violent sexual behaviour at the hands of clients and M.

Police seized numerous laptops, Blackberries and iPhones, which contained data corroborating the allegations against M, many of which were found in the locations in which the offences occurred. The evidence at trial also included a number of internet advertisements for the sexual services of the victims and Facebook messages between M and the victims. Expert evidence showed that although three Facebook accounts were used to send the messages to the victims, all were created and sent by the accused and log-in information from the victims was used to confirm that the accused had messaged them directly. We have been unable to locate a sentencing decision for this case.

III. ONTARIO

i. 2014 ONSC 1472

In 2014 ONSC 1472, a police officer, SAT, was acquitted of sexual assault, sexual exploitation when in position of trust or authority, breach of trust and making/possessing child pornography. He had met a 16-year old girl when she was stopped at a store for shoplifting. Knowing of the family troubles she had, he offered her a room to rent in the basement of his house, which she

accepted. The events that formed the subject matter of the charges and the trial were alleged to have occurred in the months after she moved into his home. SAT allegedly sexually assaulted the girl while she slept, forced her to engage in sexual activity with he and his wife, and eventually took explicit photos of her alone and engaging in sexual activity with his wife. The girl indicated that she had moved out after the initial sexual assault but came back to the house several times for a variety of reasons.

The Court questioned the credibility of the complainant, and ultimately acquitted SAT on all counts. It consistently raised her troubled family history and run-ins with the law as contributing to her potential for misleading the court:

To be sexually assaulted in June and remain in the residence for several more months when she appears to be a strong-willed person who would and could leave, raises a doubt. To return later when there is a hot tub, and use the hot tub with her girlfriend and the wife of the Defendant and the Defendant seems implausible if there had been a prior sexual assault to the extent of forced sexual intercourse. To provide a variety of statements about the type of camera used adds to the confusion...[the victim] had many contacts with Durham Regional Police when calling about domestic legal circumstances and yet made no complaint about the allegations. If the allegations against [the defendant] occurred, one cannot imagine that she would not have made some complaint. The only explanation given is that she was afraid that [the complainant] would have the shoplifting charge reinstated. That is unbelievable.²

² 2014 ONSC 1472 [emphasis added].