

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

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A. OFFENCE ELEMENTS

Sexual Interference

s. 151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years:

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

B. SELECTED CASE LAW

I. ALBERTA

i. 2014 ABPC 173

In 2014 ABPC 173, 27-year-old Mr. A pretended to be 20 years old on Nexopia. He met his underage victim online, and they had sex. They began seeing each other more, and when she wanted to break up with him, he threatened to share a surreptitiously recorded video of them having sex in his car. At trial, A denied having taken a video, and told the Court that he later recanted his threats to the victim.

Noting that A did not believe that the victim was over 16, the Court found him guilty of sexual interference with a minor. In 2015 ABPC 167 Mr. A was sentenced to 42-months imprisonment (which was reduced by pre-sentence custody), along with several ancillary orders including prohibitions on possession of firearms and attending places where persons under 16 are present, an order to provide a DNA sample, and an order to comply with the Sexual Offender Information Registry Act.

ii. 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.

iii. 2011 ABPC 9

In 2011 ABPC 9, DDM was found not guilty of offences relating to his 13-year-old stepdaughter. He took photos of her in her mother’s lingerie. She sent these photos to boys in her school, claiming that she wanted to be popular. Noting that the victim’s cognitive difficulties posed problems for her ability to retain and communicate evidence, the Court found that credibility was a key issue. The Court noted that the victim’s credibility “must be considered in relation to the evidence presented. Her disclosure arose when she and her mother wanted the accused, her

¹ 2013 ABQB 322 at 38.

stepfather, out of their residence. Further, her evidence is in conflict with other evidence.”² The Court ultimately held that the Crown did not discharge its burden of proof and accordingly found DDM not guilty.

II. BRITISH COLUMBIA

i. 2015 BCPC 224

In 2015 BCPC 224, Mr. DM was charged with three counts of sexual offences, all against several women under the age of 16. DM infiltrated a group of young people who hung out at a nearby train station, and sometimes supplied them with alcohol and narcotics. At this time, he had owned a pornography business which operated a website specializing in the uploading of images of young girls having sex or performing sexual acts before a camera. He had offered money and fake identification in exchange for performing sexual acts on camera to several young females in the group, all of who declined. He also had intercourse with two underage girls in the group on two separate occasions, after having consumed drugs and alcohol together.

No victim impact statements were provided to the Court in the course of sentencing, but the Court concluded it could reasonably infer that the adverse impact of DM’s offences against the victims has been considerable. The Court did not take his offences nor the nature of DM’s business lightly, stating: “[...] in every sense, he viewed his victims as commodities, depersonalizing them and subordinating their humanity and their dignity to his business interests and to

² 2011 ABPC 9 at 199.

his own unworthy urges.”³ His prior criminal record was an aggravating factor in sentencing, while his admission of guilt received neutral treatment as it was not delivered until the day of the preliminary hearing. DM was ultimately sentenced to four years and four months’ imprisonment with a number of ancillary orders, reduced to 18.5 months given time spent in pre-trial custody.

ii. **2015 BCSC 1721**

In 2015 BCSC 1721, 21-year-old Mr. L pleaded guilty to sexual interference, marijuana possession, and breach of recognizance. He met his 15-year-old victim on Nexopia, and offered her \$100 to perform oral sex on camera. She agreed, and he picked her up from school and recorded their encounter. When L’s girlfriend later discovered the recordings, she made a fake Facebook profile and used it to send the video to the victim. She then posted the video on Facebook, where it was displayed to the victim’s friends and family.

Mr. L also filmed another 15-year-old girl during sex without her consent. The defence argued there was a lack of physical violence that should be taken into account in sentencing. The Court made no finding of grooming or predatory contact, but noted that filming is an aggravating factor on sentencing, which it said was “moderated somewhat by the fact that there is no evidence that [Mr. L.] showed that video to any person or kept it for any purpose other than his

³ 2015 BCPC 224 at 34.

own use.”⁴ The Court sentenced Mr. L to 15 months imprisonment for sexual interference, 14 months imprisonment for sexual interference with another victim, and an additional 5 months imprisonment for possession and breach of recognizance, followed by 2-years probation.

iii. 2014 BCSC 1727

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 oc-

⁴ 2015 BCSC 1721 at 48.

curred. 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.

iv. 2011 BCSC 133

In 2011 BCSC 133, R raped an underage girl while both were under the influence of crystal meth and cocaine. R had met his victim on Nexopia. After she reported the rape, she was taken by police to the hospital where she was not examined for sexual assault because she was on drugs. At trial, the Court stated, “I did not get the sense that [the victim] was attempting to mislead the Court. It was her extensive drug use on the night in question that I find seriously undermined the reliability of her testimony relating to the issue of consent.”⁵ Nevertheless, R was ultimately found guilty of sexual interference because he failed to take reasonable steps to ascertain the victim’s age. The decision on sentencing for this case has not been located.

III. ONTARIO

⁵ 2011 BCSC 133 at 35.

i. 2014 ONSC 3794

In 2014 ONSC 3794, the Court imposed a 7-year and 7-month global sentence for luring, child pornography, sexual interference and other offences, against 6 victims, 5 of whom were minors.

Mr. D, a self-diagnosed hebephile and former theatre director, used various social media platforms to contact, groom, and exchange sexually explicit photos and conversation with children. Mr. D exchanged sexually explicit instant messages and photographs with three teenage boys and girls. He also videotaped a former adult girlfriend during sex, without her knowledge or consent. His original list of charges was 29 counts long and all dealt with some area of sexual exploitation. He pleaded guilty for 12 of these counts and was subsequently convicted.