

**TECHNOLOGICALLY-FACILITATED VIOLENCE:  
SEXUAL EXPLOITATION OF A PERSON WITH A DISABILITY CASE LAW**

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## A. OFFENCE ELEMENTS

### **Sexual exploitation of a person with disability**

**153.1 (1)** Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years;
- or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

## **B. SELECTED CASE LAW**

### **I. ALBERTA**

#### **i. 2008 ABQB 767**

In 2008 ABQB 767, Mr. K, a bus driver for disabled people, was charged with sexual assault causing bodily harm and sexual exploitation of a person with disability. The complainant Ms. L, a 40-year-old woman with cerebral palsy, met Mr. K when he picked her up for transportation purposes. There were significant differences in their testimony, but Mr. K obtained Ms. L's telephone number prior to dropping her off at her home. He later returned to her residence and proceeded to sexually assault her, leading to bruising, cuts and tearing of her genitals. Mr. K was found guilty of sexual assault causing bodily injury but was acquitted of exploiting a person with a disability. The court held that although Mr. K was considered in a position of trust in his position of employment as a bus driver for disabled people (noting that disabled people rely on this form of transportation and should expect not to be victimized by the person driving their main form of transportation) the assault did not happen on the bus and the entire interactions between Mr. K and Ms. L lasted over a few days, so a relationship of dependency had not been established.

We could not locate a sentencing decision for this case.

### **II. MANITOBA**

#### **i. 2018 MBQB 65**

In 2018 MBQB 65, Mr. F was charged with two counts of sexual assault and three counts of sexual exploitation. The two complainants, Ms. KC and Ms. RC, who were the nieces of Mr. F's wife. As children they had a close relationship with Mr. F and his wife, their aunt, and their child and spent time at their home. Mr. F began molesting Ms. RC when she was eight years old. One day, he had her remove her clothes and took photographs of her in the nude with his cellphone. Mr. F sexually

assaulted Ms. KC numerous times when she was 11-12 years old. Mr. F denied the allegations but was found not to be credible. He was found guilty on all charges.

We could not locate a sentencing decision for this case.

### III. ONTARIO

#### i. 2018 ONSC 2922

In 2018 ONSC 2922, Mr. S was charged with eight sexual offences against two twin girls, Ms. MP and Ms. CP, including sexual interference, invitation to sexual touching, sexual exploitation, sexual touching of a mentally disabled dependent (exploitation), and sexual assault. Ms. MP and Ms. CP grew up in a dysfunctional home and would often visit the store that Mr. S ran with his wife, occasionally working (unpaid) for them, babysitting their two young children, and sleeping over. They alleged that Mr. S had sexual contact with them when they were minors. They were 35 at the time of the trial. In highschool, Ms. MP and Ms. CP were both in a program for students with intellectual disabilities, but the court held that it was not proven beyond a reasonable doubt that they had a disability. It was not disputed that Mr. S had a sexual relationship with Ms. MP, who he later had a child with, and a custody battle had ensued in recent years. Ms. S testified that they would initially engage sexually in the store bathroom and watch the CCTV camera to see when customers came in, and the sexual contact continued from there.

In the case of Ms. CP, she alleged that Mr. F touched her sexually as a minor, but there was not sufficient evidence to convict Mr. F of sexual offences against Ms. CP. The court held that there was some evidence that Ms. CP's complaint may have been motivated by the custody battle between her sister and Mr. F.

The court held that Ms. MP found that she had engaged willingly in the sexual relationship, that there was no evidence of sexual activity before she was 14 years old, that Mr. F was in a position of trust but he hadn't used that to secure the sexual activity, but it did find that his behaviour

Sexual exploitation of a person with disability: *Criminal Code*, RSC 1985, c C-46, s **153.1**.

was exploitative. He was found guilty of sexual exploitation in regards to Ms. MP, but was acquitted of the other offences.

We could not locate a sentencing decision for this case.

Also see: 2017 MBQB 137 (Motion to sever counts)

**ii. 2018 ONSC 3405**

In **2018 ONSC 3405**, Ms. D was charged on 10 counts related to human trafficking, including exploiting a person with a disability. Ms. S alleged to have a disability and testified that Ms. D had taken forced her into prostitution. She alleged that Ms. D took her disability cheques, most of the money she was paid for her sexual services, assaulted her, controlled her cellphone, took her ID, created a Backpage ad for her, and forced her to do all of the sexual acts advertised including sex without a condom, but her testimony was inconsistent and varying on all of these details. The court held that Ms. S did have an intellectual disability, but that she was in fact quite independent and had capable social and emotional intelligence. She had control of her money, her social media (Facebook), her cellphone, and her identification cards. She was able to, and did, move out from Ms. D's apartment, had alternative places to live, and enjoyed the independence that the arrangement afforded her. It was found that although Ms. S had the intellectual capacity of an 8-11 year old, she still had the capacity to give her consent to work as a prostitute. Ms. D was acquitted on all counts.

**iii. 2005 CarswellOnt 10565 (ONCJ)**

In **2005 CarswellOnt 10565 (ONCJ)**, Mr. S and Ms. S were caregivers to a 32 year old man with a severe handicap. They cared for him in their home full time. A guest in their home discovered a videotape of them engaging sexually in front of him and asking him to touch Ms. S' buttocks. They plead guilty to the exploitation of a person with a disability and were sentenced to a conditional sentence for 12 months and 12 months' of probation. Additional orders included a DNA order, registration as a sexual offender for 10 years, a no contact order with the victim and his family

Sexual exploitation of a person with disability: *Criminal Code*, RSC 1985, c C-46, s **153.1**.

and a prohibition from being in the company of any mentally or physically handicapped person without the presence of a responsible adult.