TECHNOLOGICALLY-FACILITATED VIOLENCE:
SEXUAL EXPLOITATION

A. OFFENCE ELEMENTS

Sexual exploitation

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.

(1.1) Every person who commits an offence under subsection (1)

> **(a)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or
>
> **(b)** is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

> **(a)** the age of the young person;
>
> **(b)** the age difference between the person and the young person;
>
> **(c)** the evolution of the relationship; and

(d) the degree of control or influence by the person over the young person.

B. SELECTED CASE LAW

I. ALBERTA

i. 2017 ABQB 357

In **2017 ABQB 357,** Ms. E pleaded guilty to the making, possessing, and distributing child pornography and the sexual exploitation of her 17-year-old daughter, Ms. M. The offences only stopped when Ms. M moved out and disclosed the abuse to other family members.

Ms. E, under the guise of sexual education, committed several sexual offences against her daughter, including soliciting her daughter to masturbate so she could watch, sexually touching her daughter, having the daughter sexually touch her, grooming her daughter to be in subordinate/dominant sexual relationships with men, touching her daughter on camera for men watching, practicing bondage on her daughter for men watching, and sending sexually explicit photos of her and comments about her to men. She made her daughter listen repeatedly to a hypnosis audiotape entitled “Be Obedient”, had her call a man involved in these sexual offences “daddy”, and told her she needed to find a “master”.

Ms. E was a school bus driver with no previous record. She was sexually abused as a child.

As the mother and immediate caregiver of the complainant, the court very easily found she was in a position of authority. She was sentenced to 6 years’ incarceration, other orders included registration as a sex offender for life, a 10 year weapons ban, a DNA order, forfeiture of items used in the offences, a communication ban, and limitations on being near people under the age of 16.

ii. 2013 ABQB 546

In **2013 ABQB 546,** Mr. S was convicted on 23 counts of sexual offences against his biological daughter, Ms. P, from when she was 11 years old to 16 years old. This included sexual interference, invitation to sexual touching, sexual exploitation, incest, child pornography offences, and sexual assault.

Mr. S would sexually touch her and have intercourse with her. He required her to send him nude photos of herself to his cellphone, which were then stored on an online photo album. When Ms. P's mother moved out, Mr. S became the sole guardian and the sexual assaults became much more frequent. At one point, Ms. P tried to report the abuse and then recanted her statement, for which Mr. S punished her with a serious sexual assault on the side of the road on the way home from school. Ms. P and her younger sister were removed from his care in 2009 but Ms. P still sent him nude photos to his cellphone. Ms. P and Mr. S also had one unsupervised visit at a gas station where additional child pornography of Ms. P was created.

In **2013 ABQB 506**, 10 of these convictions were stayed due to the *Kienapple* principle.

Mr. S was sentenced to 12 years incarceration and the sentencing judge quoted that "the initial sentencing response of the courts to the child pornography provisions was relatively lenient. As the courts and society as a whole are increasingly becoming aware of the extent and effects of such abuse of children, the level of sentencing should be responsive to the gravity of the crime thus revealed."[1] Aggravating factors included the position of trust Mr. S was in, the age of his daughter, the abuse occurring in the home, the length of the abuse, the unprotected sexual intercourse, the continuation of the abuse after she had been put in foster care, the large number of abusive images that were created and retained, the accused's punishment of the complainant

[1] 2013 ABQB 546 at para 15

for attempting to report the abuse, and Mr. S' lack of responsibility. In regard to the photographs the court noted that "Parliament and recent authorities are constantly cautioning the Courts not to take the seeming innocuous acts of taking and storing photographs lightly. Sentences for these offences truly need denunciation as the primary objective."[2]

Due to procedural issues of the trial judge being misled by defense counsel, however, a new trial was ordered in **2016 ABCA 194.** The defense counsel had refused to conduct a judge and jury trial due to the financial state of his client despite his client wanting to.

iii. 2016 ABCA 75

In **2016 ABCA 75** the Crown appealed the sentence of the accused, Mr. V, who pleaded guilty to sexual exploitation, production of child pornography, and child luring.

Mr. V was 34 and married when he began a sexual relationship with a 15-year-old girl, Ms. P, who was a player on the basketball team he coached. He described himself as a life coach and mentor to her. He initiated the relationship by using her contact information from the basketball team records. What began as sexual communications progressed to regular and repeated sexual touching, and Mr. V and Ms. P had sexual intercourse shortly after her 16th birthday. Regular sexual incidents occurred until Ms. P ended their relationship when she was 18.5 years old. Mr. V isolated her from her friends and family, made her break up with her boyfriend, and guilted her into the relationship.

Mr. V sent her daily, highly sexualized emails and text messages throughout their relationship and bought her a cellphone when she lost hers. At his request, she or he would take sexual images

[2] 2013 ABQB 546 at para 26.

of her and once he made a video of them having sex. Mr. V's wife found one of these photos and he pushed Ms. P to lie to his wife to cover it up.

The appeal was granted and the sentence augmented from 3.5 years' incarceration to 5.5 years' incarceration. The appeal court stated that "Misuses of the Internet allow predators … virtual access into the homes and minds of vulnerable adolescents in a manner which precludes intervention and protection by parents or others. He used email and text messaging as a private means of communication with the goal of isolating and manipulating the complainant. This harmed her over and above the harm caused by the resulting sexual contact."[3]

iv. 2015 ABCA 149

In **2015 ABCA 149,** Mr. G was acquitted of sexual assault, sexual exploitation and sexual interference. His acquittal was appealed by the Crown.

Mr. G had been charged with sexual offences against his two step-daughters and his biological daughter while they were between 5 and 14 years old. These sexual offences included sexual touching of them by him, exposing them to pornographic videos, performing sexual acts on them, having them perform acts on themselves with a vibrator, and anal intercourse.

His behavior was only reported by the daughters when they were 17-18 years old and their memories had been compromised since. Due to the time it took to report and their inconsistencies, Mr. G was acquitted on all counts.

On appeal, the court found that the judge should have evaluated the complainants' actions using a subjective standard, rather than objective, in assessing credibility and should have given less weight to minor inconsistencies.

[3] 2016 ABCA 75 at para 23

A new trial was ordered.

Also see: 2013 ABQB 724 (Trial)

v. 2013 ABCA 188

In **2013 ABCA 188,** Ms. B was unsuccessful in appealing her seven year incarceration sentence after being convicted on nine charges - two counts of sexual assault, one count of inviting sexual touching, one count of sexual interference, one count of sexual exploitation, one count of making child pornography, one count of possessing child pornography and one count of administering a stupefying drug with intent to assist the commission of a sexual assault.

Between 1998 and 2003, Ms. B and her husband committed sexual offences against two female minors who were their neighbors' daughters. They were charged jointly but her husband died by suicide prior to the conviction.

Ms. B did sexually assault the girls, but participated primarily in grooming and photographing the victims, either posing them or documenting her husband committing sexual acts against them. As family friends and neighbors, they were given the opportunity to be alone in the house with the children, either individually or together. The photographing of the older girl occurred when she was 12-13 years old and when the younger girl was between 9-10 years old and continued for at least 5 years. These photos were stored on their home computer and presented as evidence at trial. The offences only stopped when the mother of the victims smelled alcohol on the younger complainant's breath and the relationship between the couples broke down. The court found Ms. B 's moral culpability high. She never admitted guilt or expressed remorse.

The appeal of her convictions was dismissed, as was the appeal of her sentencing. Her application for leave to appeal at the Supreme Court of Canada was dismissed.

Also see: 2012 ABCA 238 (appeal of conviction); 2012 ABCA 108 (judicial interim release); [2013] 456 NR 394 (Motion for extension of time to serve application for leave to appeal); [2013] SCCA No 82 (Notice of appeal).

vi. 2013 ABCA 79

In **2013 ABCA 79**, Mr. D, a 26-year-old dance teacher, was charged with sexual assault and sexual exploitation.

He was teaching the complainant, a 15-year-old girl, and began texting her sexually suggestive texts which she said "creeped her out". The two continued texting and became close. At one-point Mr. D drove the girl home and asked to come in the house where they engaged in a single act of sexual intercourse.

The trial judge withdrew the charge of sexual assault because there was reasonable doubt about whether the sexual intercourse was consensual or not, but convicted Mr. D of sexual exploitation. Mr. D appealed the conviction claiming the indictment was not clear that he was being charged with sexual exploitation and that the trial judge rendered an unreasonable verdict, however, the court did not agree. It found that Mr. D could not have been under any misapprehension that he would be charged with exploitation. The court also found that there was an imbalance of power in the relationship that would lead to exploitation, noting the 11-year age difference, the fact that Mr. D had been the complainant's dance instructor, his sexually suggestive text messages, visits with her outside of class, and him asking to come inside her house when her parents weren't home on the pretense that he was curious about what it looked like inside.

The appeal was dismissed.

I. BRITISH COLUMBIA

i. 2018 BCCA 81

In **2016 BCPC 157,** Mr. G was charged with sexual exploitation, sexual interference, sexual assault, distribution of pornography, and invitation to sexual touching.

He committed these offences against his niece's son, Mr. J, between 1997 and 2008, and against Mr. J's friend, Mr. D, between 2004 and 2006.

Mr. G acted as a grandparent to Mr. J, who referred to him as "grandpa". Mr. G cared for him in his home regularly, feeding and clothing him. Mr. J was between 4 and 16 years old at the time of the offences, which included Mr. G masturbating Mr. J, performing fellatio on Mr. J, possibly procuring prostitutes for Mr. J, taking sexually explicit photos of Mr. J, transmitting these photos to Mr. J, along with other pornographic material, by email, and sent Mr. J sexually explicit messages by email. Mr. G also sexually assaulted Mr. D during family powwow outings.

Mr. G was convicted of sexual interference, sexual exploitation, distribution of child pornography, and sexual assault causing bodily harm. He was acquitted on one count of sexual interference and one count of invitation to sexual touching. He was sentenced to 12 years of incarceration. One count of sexual assault was stayed under the *Kienapple* principle.

The appeal court allowed "transmission" of child pornography to one individual to qualify under "distribution" under s. 163.1(3).

See also: 2018 BCCA 81.

ii. 2018 BCCA 30

In **2018 BCCA 30,** Mr. R appealed his conviction of sexual interference, sexual touching, and sexual exploitation, for which he had been sentenced to 9 years' incarceration. He had also been convicted of sexual assault but it was conditionally stayed due to the *Kienapple* principle.

Mr. R committed sexual offences against his biological daughter, Ms. A, over the span of 12 years, starting when she was 4 years old. He used emotional manipulation to isolate her from the rest of the family and would find "special time" to commit the sexual assaults when they were alone together. Although she told family members of the sexual assaults when she was 6 years old, charges were never laid, and the father returned home after 2 weeks. As a teenager, he forced her to watch violent pornography to deter her from seeking sexual relations with boys her own age. When Ms. A's mother divorced the father over his behavior with Ms. A, Ms. A chose to live with Mr. R because she believed her other family did not want her.

The final incident occurred when she attempted to go to her boyfriend's birthday party and asked for a ride, at which point her father tried to violently rape her. She moved out of her father's house that day at 16 years old. However, she reported him to the police 9 years after.

Mr. R argued that the trial judge made a mistake finding Ms. A to be credible. The appeal was dismissed.

Also see: 2016 BCSC 2151 (Sentencing).

iii. 2017 BCCA 354

In **2017 BCCA 354,** Mr. S was convicted at trial of sexual exploitation and making child pornography. Mr. S abused his step-daughter from the age of 12 to 17, including frequent instances of forced sexual intercourse which he was secretly photographing and filming. At 17, she became pregnant and had to have an abortion which she kept secret from her mother. The trial judge found he expressed no remorse, nor did he recognize the harm caused to the victim,

nor provide any insight into the underlying cause for his actions. Mr. S was sentence to 7 years and 6 months incarceration.

Mr. S appealed his sentence. He was granted leave to appeal but the appeal was dismissed.

iv. 2017 BCPC 265

In **2017 BCPC 265,** a high school teacher, Mr. S, engaged in a sexual relationship with a female student for 2 years, starting when she was 16 years old and he was 37. He ran the band program that she and her family were very involved in. Over the summer, they communicated over social media and email, talking intimately and referencing her age of consent for sexual behavior. When school resumed, they began a physical relationship where she kissed and had sexual intercourse for her first time. They had intercourse over the next two years after which she tried to end the relationship. When she cut off their communication entirely, he reacted strongly and her mother reported him.

Mr. S was convicted of sexual exploitation and sentenced to 14 months' incarceration.

v. 2017 BCSC 192

In **2017 BCSC 192,** the parents, Mr. B, Ms. B, and Mr. O, of two female minors, Ms. M and Ms. C, were charged with removal of a child from Canada under s. 273.3(1)(b) of the *Criminal Code* where, if they had been in Canada, the act would have constituted sexual exploitation. Mr. and Ms. B transported their 13-year-old daughter, Ms. M, from British Columbia to Arizona, USA, where she was placed in a plural marriage to Warren Jeffs, then the Prophet and leader of the Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS"). Mr. O transported his 15-year-old daughter, Ms. C, from British Columbia to Nevada, USA, to facilitate her marriage to another member of the FLDS Church. This was done under the explicit request of Warren Jeffs,

who communicated his religious instruction by phone call. The trial judge found that being placed in a plural marriage with an older man in a foreign country, especially in the context of the FLDS doctrine, constituted a position of dependency or being in a relationship with a person who was in a position of authority within the meaning of s. 153.

The trial judge found Mr. B guilty on one count of Removal of Child from Canada, Ms. B guilty on one count of Removal of Child from Canada, and Mr. O not guilty on any count, due to the Crown's inability to provide evidence for one of the elements of Removal of Child from Canada.

Mr. B was sentenced to 13 months incarceration and Ms. B to 7 months incarceration. Ms. B's appeal of the conviction was dismissed. The Crown appealed the acquittal of Mr. O and a new trial was directed.

See also: 2018 BCCA 323 (Appeal – Mr. O); 2018 BCCA 324 (Appeal – Ms. B).

vi. 2016 BCPC 150

In **2016 BCPC 150,** Mr. O, a teacher and house leader at a boarding school, was found guilty on four counts of sexual exploitation and one count of child luring but acquitted on a charge of sexual assault. Mr. O, who was 34 years old, started a sexual relationship with a 17-year-old student, Ms. A, using Facebook messenger. Although he was not her teacher, he occupied a guardianship role at the boarding school and his wife was a teacher, academic coordinator and vice principal at a school she had attended. The couple were friends with her mother, who was terminally ill and a single-parent.

He communicated with her through Facebook and by text, where he made sexual advances, expressed worry and care for her and her family, discussed the consequences of them having a relationship, and planned where and when they would have sexual interactions. However, the interactions were initiated by Mr. O in his role as a school employee, she referred in the messages

and in the court by his professional title (Mr. Olson or Mr. O), and they had conversations which reflected their student/teacher relationship. They had sexual intercourse on two occasions.

Based on these factors of authority and trust, the court found him guilty of sexual exploitation and luring. However, the sexual intercourse, although rough in nature, was found consensual given their Facebook conversations following the incidents and therefore not sexual assault.

vii. 2016 BCCA 86

In **2016 BCCA 86**, Mr. R appealed his sentence for convictions of sexual interference, sexual exploitation, sexual assault, uttering threats, and making child pornography.

He was acquitted on one count of inviting sexual contact and one firearms offence. A conviction of possessing child pornography and an additional conviction of sexual assault were stayed under the *Kienapple* principle.

Mr. R had sexually interfered with and sexually exploited his step-daughter, Ms. M, from the age of 10 to 16, and had sexually interfered with and sexually assaulted her friend, Ms. D, when she was 16 years old. He uttered threats against Ms. M's biological mother.

Ms. M considered Mr. R to be a parent since he had lived with her and assumed that role since she was 2 years old. Mr. R and her mother also had a son together. Although Mr. R moved out when the relationship with the mother ended, Ms. M continued to see Mr. R regularly.

When she began visiting him at 10 years old, Mr. R had her perform oral sex on him. They started having sexual intercourse, vaginal and anal, when she was 13 years old. On Mr. R's computer, police found 34 photos of Ms. M naked at 14 and 15 years old and one video of Ms. M and Mr. R having sexual intercourse when she was 16 years old. The sexual touching of Ms. D occurred when Ms. M had her over for a sleepover at Mr. R's home.

Mr. R argued that the sexual activity was consensual, which the judge rejected stating Mr. R "no longer wish[ing] to parent MH did not entitle him to have sex with her" but that, on the facts, he had maintained his parenting status after the breakup and Ms. M was only sent to him under that premise. There was no air of reality to a defence of honest and mistaken belief in this case, and even if there were, that is not a valid defence against sexual exploitation.

Mr. R was sentenced to 7 years, 2 months, and 7 days incarceration.

Also see: [2016] SCCA No 174 (Leave to appeal); 2015 CarswellBC 553 (application for leave to appeal); 2014 SCCA 485 (application for leave); 2014 CarswellBC 3559 (application for leave); 2014 BCCA 349 (appeal); 2013 BCCA 176 (application for appointment of counsel); 2011 BCSC 1152 (Trial); 2011 BCSC 1158 (Voire Dire).

viii. 2015 BCSC 2055

In **2014 BCSC 1727,** Mr. M, who was between 25 and 27 during the time of the offences, was convicted on more than 24 charges, most notably: human trafficking, sexual interference, sexual exploitation, and sexual assault. The case involved eleven complainants ages 14-19 at the time the activities took place. All offences occurred in Vancouver, Richmond and North Vancouver.

Mr. 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 coerced some of the younger complainants to use drugs to facilitate their sexual encounters, used violence and threats to coerce them, including hurting and threatening to hurt their pets, and encouraged them to lie to their families so that they would not know about 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. Mr. M told one victim that there was a tracking device on her cellphone that could be used to monitor

her movement. 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. One victim attempted suicide by jumping off of a balcony. Mr. M kept some or all of their earnings.

Police seized numerous laptops, Blackberries and iPhones, which contained data corroborating the allegations against Mr. M, many of which were found in the locations in which the offences occurred. The evidence at trial also included a number of online advertisements for the sexual services of the victims and Facebook messages between Mr. 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.

In **2015 BCSC 2055**, Mr. M was sentenced to 23 years of incarceration, ancillary orders included a lifetime weapons prohibition, a lifetime sexual offender registration, a no contact order for complainants and some others, a forfeiture of all items seized by the police, and a DNA order. Aggravating factors included the large number of girls that were exploited, some of which were exploited over a long period, the vulnerable circumstances the girls were in, and the fact that M felt entitled to and did have sex with the young women and girls he was exploiting.

Also see: 2013 BCSC 2398 (evidence); 2015 BCSC 2055 (Sentencing); 2014 BCSC 1727 (Trial); 2014 BCSC 261 (Application to quash counts in an indictment); 2013 BCSC 2398 (Evidence); 2013 BCSC 2399 (Application to admit videotaped statements).

ix. 2011 BCSC 1833

In **2011 BCSC 1833,** a high school teacher, Mr. C, was charged with sexual exploitation and luring a child in relation to his 17-year-old student, Ms. M. Over a 36-hour period, the two parties exchanged text messages via Ms. M's personal cellphone and a cellphone registered to Mr. C's

wife, who was also a teacher of Ms. M at the same school. The exchange began as a channel for Ms. M to ask questions related to her upcoming history exam but became sexually explicit at the initiation of Mr. C and continued as such over a lengthy exchange.

The judge analyzed whether the text messages alone could constitute sexual exploitation and determined they could as they satisfied all the elements of the offence. He added that "Ms. M.'s status as a victim is not reduced to any extent by her degree of participation in the communications, nor does that participation detract from his responsibility for what occurred."[4]

In determining the sentence, the judges emphasized this was on the low range of seriousness for this offence but that the text messages also required deliberate and sustained efforts to conceive, type, and send, which must be contrasted to the greater spontaneity of spoken conversation.

Mr. C was sentenced to 60 days in prison. He appealed his conviction and it was dismissed.

See also: 2013 BCCA 535 (Appeal); 2012 BCSC 918 (Sentencing).

x. 2009 BCSC 1514

In **2009 BCSC 1514,** Mr. P, a criminal defense lawyer, was found guilty of sexually exploiting Mr. J, a 14-year-old, Indigenous client. Mr. P found him late at night in a public place after Mr. J had been kicked out of his home for breaking curfew, a condition of his release. Mr. P offered him a place to stay, which was needed given that he was again breaking curfew. Mr. P offered him alcohol and required they sleep in the same bed. Mr. P put on a pornographic video in the bedroom and invited Mr. J to masturbate, sexually touched him, and told him to perform oral sex on him, to which Mr. J complied. Although they never spoke of the incident again, Mr. P then represented Mr. J on occasion for the next 18 months, after which Mr. J reported him.

[4] 2012 BCSC 918 at para 32.

Mr. P had a criminal history, including an acquittal of procuring sex from 2 boys aged 14-15 where he admitted to having sex with them but not offering consideration. He also joined the British Columbia bar under a false name and falsified his criminal history.

The court found that being Mr. J's legal counsel put him in a position of great authority and trust, more than even a teacher or a doctor. He had the knowledge to know how vulnerable Mr. J was and was entrusted with his liberty.

He was sentenced to 18 months incarceration but not ordered to be a registered sex offender. Appeal of sentence was only partially allowed and did not substantially alter the sentence.

xi. 2003 BCCA 47

In **2003 BCCA 47,** Mr. E was convicted of sexual exploitation and his appeal of the conviction was dismissed. He was a dance teacher in his 20s at a local high school who successfully seduced a 14-year-old girl. He would call her home every day, do her favors and give her gifts, lie about his marital status, and travel alone with her to another city under the guise of a group dance trip. They had consensual sex on various occasions over 4-5 months.

He was found guilty due to his position of trust in relation to the girl, given the age difference, his role as an instructor, that he was employed by a municipal program, the program was hosted at her high school, he led her to confide in him, and he developed their relationship inappropriately given his role in her life.

He was successful in appealing his sentence and was granted a conditional sentence.

See also: 2003 BCCA 214.

xii. 2001 BCCA 462

In **2001 BCCA 462,** Mr. G appealed his conviction of six counts of various sexual offences involving teenage boys spanning between the 1970's to 1990's.

Mr. L was 13-14 years old when Mr. G, who assisted in running the music and gymnastics programs at the boarding school, sexually touched him. Mr. L reported it to the headmaster.

Mr. R was 14 years old when he began an 8 year-long sexual relationship with Mr. G. Mr. R was having family problems and sometimes lived with Mr. G. Mr. R's foster mother overheard phone calls between them and reported the relationship. Mr. R did try to extort Mr. G for money during the trial.

Mr. A was 14 when he left home and began hitchhiking. He was picked up by Mr. G and began spending time at his home, where they developed a sexual relationship over many months.

Due to multiple errors in law by the trial judge, a new trial was ordered on all counts except for the sexual assault of Mr. R for which Mr. G was acquitted given insufficient evidence.

II. MANITOBA

i. 2015 MBQB 96

In **2015 MBQB 96,** Mr. F was convicted of sexual exploitation for sexual offences committed against a 17-year-old girl, Ms. C, who was living at his family home part-time as a caregiver to him and his wife's children. Ms. C was having trouble at home given her parents' divorce and found work with Mr. F and his wife who allowed her to stay there overnight, especially on weekends. Her mother had knowledge of the arrangement and expressed that Mr. F should be mindful that her daughter was mentally and emotionally vulnerable at the time.

In September 2012, Mr. F began making overt sexual approaches towards Ms. C when his wife was not home, including remarks and touching, which she did not reciprocate. On September 28, he went to her bedroom in the house and persisted in wanting to have sex with her, which she eventually relented to. They continued to have consensual sexual interactions in Mr. F's home or truck. Ms. C's mother found text messages between the two, giving evidence to these interactions and she notified the authorities.

Given his position of trust in their relationship, Mr. F was found to have sexually exploited Ms. C despite her consent. He was sentenced to 18 months in prison. Appeals of the conviction and sentencing were dismissed.

Also see: 2017 MBCA 43 (Appeal); 2016 MBQB 21 (Sentencing).

III. NEW BRUNSWICK

i. 2017 NBQB 60

In **2017 NBQB 60,** a 26-year-old youth leader at a local church and high school teacher, Mr. H, pleaded guilty to the sexual exploitation of two teenage boys, Mr. B and Mr. A. Both boys confided in Mr. H that they were gay. After being privy to this information, Mr. H began texting the Mr. B about his sexual orientation and harassment at school. He later engaged in sexual behavior with both claimants, including kissing, fondling, mutual masturbation, oral sex, and anal sex, some of which was unwanted, after which Mr. H would have them join in joint prayer to ask for forgiveness.

These claimants were both at critical and fragile stages of their life and looked to Mr. H for support given his position in their lives. Mr. H was sentenced to 3.5 years.

ii. 2015 NBCA 10

In **2015 NBCA 10,** Mr. M appealed his conviction for sexual exploitation and applied to appeal his sentence of 6 years imprisonment. Both the appeal and application were dismissed.

Mr. M sought out Ms. S, a 16-year-old who struggled with drug addiction, suicide, and self-harm, and who had just finished rehabilitation for her addiction at Portage. He was 50 years old at the time and would exchange money and drugs to, firstly, get her phone number, and then acquire oral sex, sex with a condom, and then sex without a condom, as she became increasingly dependent on him. This escalated to 3-4 times a week. After going through an abortion and becoming increasingly depressed and suicidal, she told her boyfriend who she was living with. She then reported the relationship to the school guidance counselor and then the RCMP.

He was sentenced to 6 years' incarceration.

Case relied heavily on *R v Anderson* as the authority on sexual exploitation of a "consenting" young person.

iii. 2014 NBCA 71

In **2014 NBCA 71**, a 41-year-old trusted elected municipal officer, pastor, community activist, and out-reach worker who worked with under privileged youth and acted as a foster parent pleaded guilty to 46 offences including child pornography offences, sexual interference, invitation to sexual touching, sexual exploitation, child luring, sexual assault and extortion against young boys, including one of his foster children. A police investigation into online child exploitation led to Mr. S's collection of thousands of unique child pornography images and evidence of other abuse. The police were able to identify 17 young boys in their investigation.

Beyond his collection of child pornography, Mr. S engaged in a campaign of abuse. Mr. S allowed young boys to consume alcohol and marijuana and engage in sexual activity at his home, including him sexually abusing the boys himself. The boys were between 6 and 15 years old, and

some were paid for their sexual activity. He also used the internet to live stream his sexual offences and to view young boys acting sexually, videotaped their sexual activity, and used images he had of the boys to extort them. At times he posed as a teen girl to engage boys in sexual chats online and obtain sexual images and to extort more images from them. His interactions with them show a callous disregard for the boys and their well-being and an abuse of his position of power and trust. One child was ostracized from his social group for complaining of the abuse and he was not believed.

He was sentenced to 18 years of imprisonment, which was on the high end of the spectrum of sentences for this type of offence, but the sentence was affirmed as reasonable upon appeal, largely due to the court's belief that adult sexual predators of children should pay a "heavy price" for their offences.

Also see: 2013 NBPC 17 (Sentencing).

iv. 1999 CarswellNB 528

In **1999 CarswellNB 528**, a 40-year-old police officer, Mr. R, was acquitted of sexual exploitation. Mr. R began a friendship with Mr. H, then 16 years old, when they were both patients at a psychiatric hospital. When Mr. R was discharged, he sent Mr. H letters, small gifts, and phoned him at the hospital. When Mr. H was discharged, they spent a weekend together and had sexual relations. Both parties claim it was consensual. The court found that although Mr. R was a police officer, he was not acting in a position of authority in this relationship and the decisions of Mr. H were never affected by his role in the police service. The appeal by the Crown was dismissed.

IV. NOVA SCOTIA

i. 2018 NSCA 18

In **2016 NSPC 19,** the accused, Ms. H, was convicted of child luring, sexual exploitation, and sexual touching of two teenage boys.

Ms. H was an elementary school teacher who sent sexually explicit messages, videos, and photos to two former students, Mr. L and Mr. G, over many months. She performed sexual acts on one of the students.

She was exempt from all mandatory minimum sentences on crimes she was convicted of, given that she was experiencing a period of mania due to her bipolar disorder.

Given her mental illness, she was found less morally culpable and given a 15 months' conditional sentence, additional orders included a lifetime registration as a sex offender, a weapons prohibition, restrictions on being near children under the age of 16, and a no contract order with the victim. She had been acquitted previously of sexual interference and sexual assault. The appeals of the sentence and convictions were dismissed.

See also: 2018 NSCA 18 (appeal); 2016 NSPC 78 (sentencing and Charter challenge); 2016 NSPC 19 (trial).

ii. 2011 NSCA 77

In **2011 NSCA 77,** Mr. C's conviction of committing sexual assault, invitation to sexual touching, sexual exploitation, and sexual interference against his step-daughter, Ms. J, was overturned and the charges were conditionally stayed at the discretion of the Crown, with the option of a new trial to be ordered.

When Ms. J was 15-16 years old, Mr. C was alleged to have shown her sexually explicit material on the computer or television, masturbated to the material, and engaged in sexual behavior with

Ms. J while her mother was either asleep or away. However, the convictions were overturned because the judge committed an error in law in violating evidentiary rules.

iii. 2004 NSCA 154

In **2004 NSCA 154,** Mr. P appealed his sentence of 9 years and 10 months incarceration for 14 counts of sexual offences for which he pleaded guilty. He had been charged with 47 offences but pleaded guilty to charges of sexual exploitation, keeping a common bawdy house, permitting persons under age of 18 to be inmates of common bawdy house, procuring persons under age of 18 for prostitution, controlling the movement of persons under age of 18 to aid them in engaging in prostitution, possession of child pornography, making child pornography and distribution of child pornography.

In addition to a running an elaborate prostitution business with minors, he also operated a pornography website featuring child pornography, composed of photos and videos of the girls under his care, and a live-stream video feature for users to request sexual acts to performed for a fee. Finally, he had encouraged his 15-year-old daughter, Ms. C, into prostitution and trained her to perform fellatio by having her conduct said acts on himself. He took sexually explicit photos of her, put them on the internet as advertisement, and featured her on the live-stream. In his personal possession he had volumes of child pornography and pictures of other depraved acts stored on his computer.

The sentencing judge imposed a sentence higher than the joint recommendation of the Crown and defense, which was the subject of the appeal. Given sentencing factors which were not supplied to the sentencing judge by counsel, the appeal was allowed, and the sentence set aside. The appeal court imposed a sentence of 3 years and 8 months incarceration in addition to 28 months served prior to conviction, as recommended in the original joint report.

Also see: 2003 Carswell NS 613 (sentencing).

V. 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 high school, 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. MP 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. S 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. S.

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, and that Mr. S was in a

position of trust but he hadn't used that to secure the sexual activity. However, the court did find that his behaviour was exploitative. He was found guilty of sexual exploitation in regards to Ms. MP, but was acquitted of the other offences.

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

i. 2017 ONCJ 906

In **2017 ONCJ 906**, Mr. L, the complainant's high school teacher, was charged with sexual assault, sexual interference, and invitation to sexual touching.

He denied he had been sexually involved with his 15-year-old student. She said that Mr. L had given her money to purchase a dildo and that she texted him pictures of the dildo and sent him nude photos of herself. She also said the Mr. L told her he would show her how to use it, but she forgot to bring it to the meeting, and the two had sex instead. She reported other sexual interactions. There was no evidence of the texts or photos. The Court found that the texts on her phone were not sexual and did not suggest a covert relationship. Additionally, her testimony regarding dates, locations, activities and timing was inconsistent. Testimony from Mr. L, his spouse and several students supported his version of events.

He was acquitted of the charges.

ii. 2017 ONCJ 733

In **2017 ONCJ 733,** Mr. M pleaded guilty to making child pornography, making child pornography available, possessing child pornography, and to the sexual assault and sexual exploitation of his step-daughter, Ms. K.

Mr. M lived with his wife of 14 years, his step-daughter, and their 9-year-old biological daughter prior to the arrest. He and his wife were in an open relationship. He groomed his step-daughter for sexual interactions from 13 to 17 years old. They would both walk around in their underwear, he and her mother gave her a dildo at 14, he would give her massages on her bed, he admitted he was sexually attracted to her as early as 13, and talked with her about her sexual relations.

During these massages, of which there were about 60, he would secretly take photos of her, as well as touch her sexually and touch his penis to her if she would fall asleep. He belonged to a child pornography chat room, where he would download child pornography photos and videos centered around step-daughter abuse and would also upload the photos of his step-daughter, in which you could see her face.

The court focused on two aggravating factors: (1) the downloaded child pornography included girls performing fellatio as young as 2 years old, and (2) by uploading the photos of Ms. K, Mr. M was "perpetuating the sexual degradation of [Ms. K] in perpetuity. Once these images are on the internet, they are very difficult, if not impossible, to eliminate … this is the grossest breach of trust that a parent can inflict on a child."[5]

He was sentenced to 4.5 years' incarceration.

iii. 2017 ONSC 207

In **2017 ONSC 207,** Mr. C was charged on 19 counts sexual offences against minors. Mr. C was 23 years old at the time of the offences, the coach of a high school basketball team and helped run a summer basketball program. Under the guise of "locker room talk", Mr. C solicited sexual photos from boys in these programs to "prove" they did not have small penises, enticing them with financial wagers. Although only three victims were formally presented by the Crown, 10

[5] 2017 ONCJ 733 para 17.

similar fact witnesses were also presented, who, although over 18 at the time, recounted similar exchanges with the accused.

Mr. C admitted to the behaviors of the charge but denied that it was for sexual purposes. However, records show he solicited sexual content over text message or social media. Throughout 2012, he asked for and received photos or videos from MB, 17 years old, AP, 16 years old, and MM, 17 years old. The photos showed their genitalia, being flaccid, erect, or masturbating.

The defense of "private use" from *Sharp* failed because the sexual conduct was unlawful, being sexually exploitative. Any consent given was vitiated by his relationship to them.

He was found guilty on two counts of luring a child, one count of making child pornography, one count of possessing child pornography, one count of accessing child pornography, and one count of sexual exploitation. He was acquitted on four other counts of child luring, one count of making child pornography, and one count of sexual exploitation, and one count of child pornography was stayed due to the *Kienapple* principle.

Mr. C's s. 11(d) *Charter* application failed but his s. 12 *Charter* application was granted in part, finding the mandatory minimum sentence of 1 year for child luring and sexual exploitation unconstitutional.

Also see: 2017 ONSC 4246 (*Charter* Challenge); 2016 ONSC 6923 (*Charter* Challenge).

iv. 2017 ONSC 2625

In **2017 ONSC 2625,** Mr. T was found guilty of sexual exploitation due to the sexual relationship he fostered with his step-daughter, Ms. Z, who was 16 years old when it began. Ms. Z was infatuated with him and wanted to marry Mr. T.

Mr. T dated Ms. Z's mother for four years and did not assume a parental role over her. Ms. Z was at one point in a group home for girls, she had a strained relationship with mother and no relationship with her biological father. When Mr. T began driving Ms. Z to and from counseling their relationship started. He made sexual comments towards her, touched her hands and legs, and would provide her cigarettes and marijuana. The mother broke up with Mr. T and called the police when she witnessed him kissing her daughter's neck.

Mr. T and Ms. Z continued to meet up secretly and have sexual intercourse at Mr. T's new home. He used a phone to communicate with her. They spoke about her moving in at 18 and them getting married. The mother found out and again reported him to the police.

He was found in a position of trust even though he did not parent her. This is due to their age difference, the nature of their relationship, and her vulnerable situation. The relationship was "such that it create[d] an opportunity for all of the persuasive and influencing factors which adults hold over children and young persons to come into play, and the child or young person [was] particularly vulnerable to the sway of these factors".[6]

v. 2016 ONSC 6861

In **2016 ONSC 6861,** Mr. B was convicted of one count of sexual assault and two counts of sexual exploitation.

Between 2008 and 2014, Mr. B committed sexual offences against his step-daughter who lived under his care. Mr. B was married to the mother of his step-daughter, with whom he has two biological daughters. Mr. B controlled Ms. D's social interactions with peers through constant calls and text messages between them and surveillance of her cellphone and computer communications with others. As a result, Ms. D was socially isolated. At 16 years of age, Mr. B

[6] 2017 ONSC 2625 at para 43.

sexually touched the complainant, showed her pornography, and made her touch his penis, all under the guise of sexual education. In January 2014, Ms. D confronted Mr. B about his behavior, informed close friends, and reported Mr. B to the police.

In sentencing, the judge emphasized that trust and authority exist as a spectrum when it comes to the elements of a sexual exploitation offence, and father figures fall at the most serious end of that spectrum. Mr. B was sentenced to 2 years less one day incarceration.

vi. 2016 ONCJ 605

In **2016 ONCJ 605,** Mr. R pleaded guilty to one charge of exposing his genital organs to a person under the age of 16 years. He was charged with exposing his genitals, invitation to sexual touching, and sexual exploitation, although the Crown intended to drop the latter two charges in exchange for a guilty plea.

Starting in 2005, when Mr. R exposed his erect penis to his 10 or 11-year-old step-daughter, Ms. L, in their living room, until 2011, Mr. R engaged in a pattern of predatory sexually activity towards her. Ms. L and Mr. R both contend that there was never any sexual touching or intercourse. However, the police found 812 text messages between the two parties which are sexually explicit, reciprocal, and describe sexual activity between them. The trial judge found that the text messages a significant aggravating factor in sentencing.

Mr. R has five biological children, the three youngest being with Ms. L's mother. He has a previous conviction for sexual assault on his 15-year-old niece in 1995.

Mr. R was sentenced to 3 years' probation.

vii. 2016 ONCJ 264

In **2016 ONCJ 264,** a gymnastics coach, Mr. J, was convicted of the sexual exploitation and sexual assault of a gymnastics student, Ms. M, when she was 16 years old.

Mr. J was Ms. M's team coach when she was 14 years old. When she was 15 years old, he contacted her via text and social media and they developed a sexual relationship. He waited until she was 16 years old to have a physical relationship with her, which included fellatio and sexual intercourse. They kept the relationship secret. Ms. M ended the relationship after a sexual encounter in which she felt forced to participate and upon which he insisted even after she refused.

Although Mr. J was not Ms. M's coach at the time, he had input on her training, knew she was having family issues, and was employed to ensure her safety and instruction.

The sexual assault charge was conditionally stayed on the *Kienapple* principle.

Also see: 2016 ONCJ (Sentencing).

i. 2016 ONSC 3341

In **2016 OSNC 3341,** Mr. W is being re-tried for the sexual assault and sexual exploitation of his 15-year-old step-daughter, Ms. J, after a hung jury. Between 2000 and 2006, Mr. W used the stigma and lack of education around HIV/AIDS to threaten, misinform, and guilt Ms. J into engaging in sexual acts with him. She came to him as a child to a parent when she had her first sexual encounter with another teenager, after which he told her she probably had HIV and that if she didn't engage in sexual intercourse with him that he would tell her mother about the boy. After engaging in intercourse, he told Ms. J that she had given him HIV and so she had an obligation to keep engaging in sexual acts with him. This continued regularly for years. Mr. W falsely submitted an HIV test for Ms. J and told her the only way to get the medication was to continue their relationship and move in with him. He also offered to pay her mortgage arrears in

exchange for her having sex with his friend and videotaping it. This continued until she was 21 years old.

On whether it was relevant that Mr. W took Ms. J's virginity, the judge stated: "It is entirely irrelevant to the guilt or innocence of W.L. whether J.L. was a virgin at the time of the alleged sexual assault. Just as the accused cannot raise a complainant's previous sexual activity to undermine her credibility or sympathy, the Crown should not reference the complainant's "previously chaste character" in order to enhance her credibility or sympathy."[7]

See also: 2016 ONSC 5141 (evidentiary trial).

ii. 2015 ONCA 927

In **2015 ONCA 927,** Mr. G appealed his conviction for the sexual exploitation of Ms. N. He was her music teacher in grade 9 and conductor of the school band. He was in his late 20s at the time. He was very close with his students. He would hug male and female students, act as a counselor or friend to them, and e-mailed his students regularly outside of his teaching capacity. In the 10th grade, Ms. N's parents and those of another student expressed concern that Mr. G's relationship with the students had become too familiar. He apologized to the parents and stopped emailing the students. Ms. N and Mr. G developed a friendship and then a romantic relationship, starting when she was in the 10th grade, while she was struggling with anxiety and depression. When she was 18-years-old they had sexual intercourse. The relationship was only later exposed when Ms. N confided in a counselor who reported him to the Children's Aid Society.

[7] 2016 ONSC 3341 para 71

Mr. G did not deny he was in a place of authority and did not deny she was a young person. However, he denied that they ever kissed while she was under 18 years of age, which she claimed happened on two occasions. The trial judge did not find Mr. G credible and convicted him of sexual exploitation. His appeal of the conviction was dismissed.

iii. 2014 ONSC 1472

In **2014 ONSC 1472**, Mr. T, a police officer 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. Mr. T 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 Mr. T 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.[8]

VI. PRINCE EDWARD ISLAND

i. 2018 PESC 7

In **2018 PESC 7,** Mr. M pleaded guilty to sexual interference and sexual exploitation.

Mr. M began dating Ms. A's mother and quickly took over the parenting role of her two daughters through emotionally abusive behavior.

Ms. A struggled with mental health issues and bullying. At 12 years old, Mr. M started offering her a cigarette in exchange for a kiss, rubbing her back, and making sexual comments. When he texted her about taking her virginity, she told her mother.

Mr. M began sexually touching her and, shortly after, had sexual intercourse with her. They had intercourse 3-4 times a week. He used a condom until he convinced her mother she needed to be on birth control. Intercourse and fellatio, where he forced her to swallow, continued for the next two years at this rate until she reported it to a youth worker after being arrested for breaking and entering.

He was sentenced to 9 years' incarceration.

[8] 2014 ONSC 1472 [emphasis added].

ii. 2009 PECA 4

In **2009 PECA 4**, Ms. A was appealing a charge of sexual exploitation against a teen girl she had once coached. When Ms. A was 22-years-old, she was an assistant soccer coach to an Under 14 soccer team that the complainant, Ms. C, and Ms. A's younger sister were both on. Ms. C and the coach were in contact via email, social media, and socially and had a close relationship over a two-year period. Ms. C's parents did not approve of the friendship and had the manager of the soccer team remind Ms. A not to have close friendships with the players.

Ms. C's parents were concerned about the relationship and requested that the Canadian Soccer Association investigate the relationship, which found no evidence of misconduct and classified the email communication as "adolescent chatter". Ms. A stopped communicating with Ms. C following the investigation but eventually Ms. C resumed contact with Ms. A. Ms. A was no longer the complainant's coach at this time and Ms. C was 15 years-old.

Ms. C's parents contacted the police when Ms. C disclosed to them that she and Ms. A had engaged in sexual activity, which Ms. A denied. Ms. A was found guilty of sexual exploitation and sentenced to 5 months incarceration. The Court of Appeal overturned the decision and Ms. A was acquitted. There was a lack of evidence of sexual contact between the two. In addition, given the definition of "young person" (prior to a 2008 amendment), Ms. C was able to legally engage in sexual activity with an adult and the age difference was not sufficient evidence of exploitation.

VII. QUEBEC

i. 2017 QCCQ 318

In **2017 QCCQ 318**, Mr. T pled guilty to sexual interference, invitation to sexual touching, sexual exploitation, criminal harassment, and using a forged document.

Mr. T was married and has 2 children, with a career as a firefighter, emergency ambulance responder, and military police. In 2003, as a 37-year-old firefighter, Mr. T began a sexual relationship with the complainant, Ms. J, when she was 12 years old. She was taking the CPR course Mr. T taught at a local high school and Mr. T asked to exchange email addresses. He told her to hide the emails and not tell anyone. After communication over email, when she is 13 years old, they meet up in person and he shows her his penis and asks for oral sex, which she refuses. They meet two more times, where he asks the same and she refuses, but eventually agrees to masturbate him. They begin to meet more frequently where he sexually touches her, and she gives him oral sex. When she is 14, she falls in love with him, posting pictures of him in her room, writing diary entries about him, and showing up at his work. They continue their relationship, and when she is 15, they have sexual intercourse without a condom and he ejaculates in her. At 16, she tells her mother they are dating and they begin to have sex regularly.

When she is 19 years old, she breaks up with him, but they continue having contact and sexual encounters. However, he does not take the breakup well and begins to physically stalk her. He also creates a fake Facebook account under a girl's name to communicate with her and sends forged documents to Ms. J's mother from Canada's National Defense suggesting that Ms. J is bipolar. He harasses Ms. J by text message when he discovers she is dating someone else. Four years later, Ms. J files a complaint with the police.

Mr. T is sentenced to 29 months incarceration.

ii. 2016 QCCQ 7139

In **2016 QCCQ 7139**, a 30-year-old personal trainer, Mr. L, was found guilty of sexually assaulting and sexually exploiting Ms. B, who was 15 years old.

Ms. B had signed up with her mother at the gym where Mr. L worked. Mr. L approached Ms. B at the gym with the suggestion that she hire him as her trainer, and she agreed. At their first meeting, Mr. L made inappropriate comments, asked about Ms. B's sexual preferences, and, under the guise of professional training, made her remove her shirt and her bra. He proceeded to compliment her breasts, touch them with his hands and mouth, and proposed other sexual activities. He asked her not to mention this to anyone and scheduled another appointment for Ms. B. He called her after the meeting to confirm their follow-up appointment, but Ms. B had already told close friends about the incident and the police were contacted. The court found that a personal trainer holds a position of trust, which is established through providing advice, evaluations, and personalized programs, and Mr. L used this trust to have her remove her clothes.

iii. 2013 QCCQ 13361

In **2013 QCCQ 13361**, Mr. P, a local restaurant owner, was found guilty of sexually exploiting and sexually assaulting his 17-year-old worker, Ms. M. Over the course of many months where Ms. M worked part-time, Mr. P touched her inappropriately at work, forcibly kissed her, and threatened that she would never be able to find another employment if she told anyone or quit. When she began working full-time, he would send her many text messages which included kissing face emojis. If she did not answer, he would begin harassing her through text. The final incident occurred when Mr. P and Ms. M were alone at work where he sexually assaulted her. Afterwards he texts Ms. M, which her friend sees and reports to her mother.

He was acquitted of criminal harassment charges and the sexual assault conviction was conditionally stayed. For the conviction of sexual exploitation, Mr. P was sentenced to 10 months incarceration.

See 2014 QCCQ 13471 (sentencing) and 2017 QCCA 1767; 2017 QCCA 1768 (appeal).

VIII. SASKATCHEWAN

i. 2017 SKQB 185

In **2017 SKQB 185**, Mr. L was 48 years when he met Ms. R, who was 15-years-old, when he dated her mother for a short period after connecting on Plenty of Fish. Ms. R later turned to Mr. L when she lacked housing or money. Ms. R was friends with Ms. B, then 16-years-old, and introduced Ms. B to Mr. L when she needed a ride from a party. Ms. B began living with Mr. L when she was kicked out of her home. She was a youth with a criminal record, drug and alcohol addiction, and a history of homelessness. He gave her a house key and facilitated her purchase of alcohol and drugs. He was naked around Ms. B and Ms. R frequently, required them to be naked, massaged Ms. B, joined her in the shower to touch his genitalia against her, and sexually assaulted her.

He fell into financial arrears supporting Ms. R and facilitated her violating her probation conditions. He denied all allegations and described his actions towards her as altruistic, trying only to help a "wayward youth".

He was found guilty of sexual assault and sexual exploitation. He was sentenced to 4 years' incarceration.

Note: Possessing and accessing child pornography are separate offences, and therefore possession charges cannot be amended to accessing child pornography if original charge lacks sufficient evidence.

Also see: 2017 SKQB 327 (sentencing); 2017 SKQB 185 (trial); 2017 SKQB 123 (directed verdict); 2017 SKQB 119 (amendment); 2017 SKQB 99 (Charter challenge); 2017 SKQB 53 (Charter challenge).

ii. 2014 SKCA 126

In **2014 SKCA 126,** the Crown appealed the sentence of Mr. N who had been convicted of sexually touching, sexually exploiting, making child pornography of, and possessing child pornography of, his grand-daughter while she was between the age of 3 and 5. While babysitting, he would massage her vagina through her diaper under the guise of a game, sexually touch her, put his penis in her mouth or hand, show her pornography, and take photos of her genitalia. He also possessed other child pornography.

The appeal court found the age of the victim carried great weight and increased the sentence from 4 years of incarceration to 5 years.

Also see: [2014] 117 WCB (2d) 656 (Sentencing).

iii. 2012 SKCA 74

In **2012 SKCA 74,** the Crown appealed the acquittal of a high school teacher, Ms. M, on charges of sexual exploitation of a 15-year-old male student, Mr. X. Although not his teacher, Ms. M was the other grade 9 teacher at Mr. X's school. They had both participated in a school weightlifting program, after which they began working out together at a public gym. Their relationship developed over time, with multiple instances of sexual intercourse, happening multiple times a week for several months. The friends of Mr. X did not believe him when he told them the situation, so they listened in on Ms. M make sexual and romantic comments to him over the phone. Their relationship was reported when Ms. M touched Mr. X in front of other students on a school trip and took him away for private interactions.

The judge erred in finding that the teacher was not in a position of authority outside of school hours, it is continuous. The appeal court ordered a new trial.

iv. 2012 SKCA 18

In **2012 SKCA 18,** Mr. S had been convicted of child luring and invitation for sexual touching but had been acquitted of sexual exploitation and distribution of child pornography. The Crown appealed these acquittals and a new trial was ordered for the child distribution charge given the narrow interpretation of the language of the offence in reference to the "depicted" age of person in the photo.

Mr. S communicated with an undercover officer presenting as a 14-year-old girl on NetLog, to whom he sent ten pornographic photos. These photos including a girl masturbating, being penetrated, and picture of a penis and a picture of ejaculation on her body. He claimed it was his step-daughter when she was 16 years old and that they had began having sex when she was 14 years old. He encouraged the undercover officer to masturbate to the photos along with him. This launched an investigation into his relationship with his stepdaughter.

To the police, Mr. S claimed he was in love with his step-daughter and they started sexual relations when she was 17.5 years-old. The step-daughter claimed it started when she was 18, that she seduced him, and that the photos were taken consensually although she did not know they were being forwarded. She testified for the defense.