IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *R. v. Regular*, 2024 NLSC 100
Date: June 27, 2024
Docket: 202201G1230

HIS MAJESTY THE KING

v.

ROBERT REGULAR

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Before: Justice Vikas Khaladkar

Place of Hearing:	St. John's, Newfoundland and Labrador
Dates of Hearing:	April 8-19, May 6-7, 2024
Date of Oral Judgment:	June 27, 2024

Summary:

The Complainant's statements to police and her testimony contained a number of material inconsistencies – sufficient to cause me to have a reasonable doubt about the allegations against the Accused. As a result, all of the charges against the Accused were dismissed.

Appearances:

Deidre D. Badcock	Appearing on behalf of the Crown
Jerome P. Kennedy, K.C. and Rosellen Sullivan, K.C.	Appearing on behalf of the Accused

Authorities Cited:

CASES CONSIDERED: *R. v. Starr*, 2000 SCC 40; *R. v. Lifchus*, [1997] 3 S.C.R. 320; *R. v. W. (D.)*, [1991] 1 S.C.R. 742; *R. v. H. (W.)*, 2011 NLCA 59; *R. v. S. (J.H.)*, 2008 SCC 30; *R. v. Regular*, 2024 NLSC 31; *R. v. W. (R.)*, [1992] 2 S.C.R. 122

STATUTES CONSIDERED: *Criminal Code*, R.S.C. 1985, c. C-5

REASONS FOR JUDGMENT

KHALADKAR J.:

INTRODUCTION

[1] This case involves allegations of sexual impropriety spanning over a dozen years. At all times material the Accused was a practicing lawyer. He represented the

Complainant's family, as well as the Complainant, for many years preceding, and postdating, the allegations. The allegations concern a single Complainant.

[2] The first incident involves an encounter between the Complainant and the Accused in the Complainant's mother's car. It is alleged to have occurred at a McDonald's parking lot at lunch time – not far from the Accused's law office. The alleged incident gave rise to Counts 1 and 2 in the Indictment – a charge of sexual interference and a charge of sexual assault. The date range in the Indictment for Counts 1 and 2 covers the time frame when the Complainant was between 12 and 15 years of age.

[3] The second incident involves an allegation of sexual assault on July 24, 2008. The then 19-year-old Complainant alleged that the Accused digitally penetrated her vagina in his office during an interview concerning child apprehension proceedings initiated by the Department of Child, Youth and Family Services relating to the Complainant's infant daughter. It gives rise to Count 3.

[4] The third incident involves an allegation of a sexual assault in the Accused's law office when the Complainant was obtaining legal advice in relation to a shoplifting incident in which she was involved. The Complainant indicated that the sexual assault consisted of sexual intercourse on a coffee table in the Accused's office. Count 4 relates to this incident.

[5] The final incident involves an allegation of a sexual assault in the Accused's law office immediately after an interview by the police regarding an assault that the Complainant might have witnessed against a third party. The Complainant indicated that the sexual assault occurred in the Accused's boardroom at the boardroom table. It is covered by Count 5.

[6] Note to Reader: The final incident actually occurred prior in time to the incident relating to Count 4. For the purposes of this decision, I have kept the same chronology given by the Complainant.

[7] The Accused has denied any sexual impropriety relating to the Complainant.

ISSUE

> **Has the Crown proved the Accused's guilt, on each Count in the Indictment, beyond a reasonable doubt?**

[8] I intend to analyze the evidence in this case on the basis of the four subject areas framed in the Indictment. The first relates to Counts 1 and 2 – the parking lot incident. Count 3 relates to an incident alleged to have occurred in the Accused's old office building. Counts 4 and 5 concern allegations of sexual assault in the Accused's new office building.

APPROACH TO THE BURDEN OF PROOF

[9] The term "beyond a reasonable doubt" has been described as being closer to absolute certainty than the civil standard of a "balance of probabilities". I am aware that it is not possible to prove anything to an absolute certainty, but that the standard is closer to absolute certainty than it is to the balance of probabilities. (*R. v. Starr*, 2000 SCC 40*)*

[10] I know that all accused persons come to Court cloaked in a mantle of innocence – a mantle that can only be lifted once I am convinced of an accused's guilt beyond a strict standard. In that regard, the burden is on the Crown to prove all

essential ingredients of the offence. The burden never shifts and the Accused is not obligated to prove anything. He can remain silent throughout his trial if this is his wish. (*R. v. Lifchus*, [1997] 3 S.C.R. 320*)*

[11] Where the Accused has testified I must apply a three part test that requires me to: firstly, acquit the Accused if I believe his testimony; secondly, acquit the Accused if I do not believe him but if the evidence he has led causes me to entertain a reasonable doubt of his guilt, and: thirdly, acquit the Accused if, on all the evidence led by the Crown and the Defence, I am not satisfied of the Accused's guilt beyond a reasonable doubt. (*R. v. W. (D.)*, [1991] 1 S.C.R. 742)

[12] Where a material inconsistency relates to a matter about which an honest witness is not likely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. In viewing inconsistencies, I am bound to look at all of them in order to determine whether, cumulatively, they will impact my final decision. (*R. v. H. (W.)*, 2011 NLCA 59)

[13] I am bound to consider the totality of the evidence. In doing so, I must not engage in a credibility contest to see whose version I prefer. That is not the way in which criminal trials are to be conducted. (*R. v. S. (J.H.)*, 2008 SCC 30)

ANALYSIS

Evidentiary Background

Counts 1 and 2

[14] The only witnesses with respect to the incidents specified in Counts 1 and 2 were the Complainant and the Accused. The Complainant's mother is said to have arranged the meeting and was a potential witness, but she passed away before this trial took place. She was contacted by Cst. Percey to give a statement about a week before she died. The Complainant's mother declined the invitation to provide a statement and, therefore, her evidence, is not available.

[15] Some of the Crown and Defence witnesses testified in relation to the office locations that had been described by the Complainant. The Accused was able to review his files and diaries and, from that review, determine the timing and nature of the legal services that were provided to the Complainant and her mother.

[16] The Accused testified that he would never have met with a minor without her parent present, and did not meet with the Complainant and her mother in a motor vehicle. He stated that if any meeting such as this had taken place, it would have been at his office – which was very close to the location described by the Complainant.

[17] The Accused denied that anything inappropriate took place in relation to Counts 1 and 2.

Count 3

[18] Colleen Petten, who was a supervised access worker with Child, Youth and Family Services, accompanied the Complainant to the Accused's office building and Lisa Goulding, a social worker, interacted with the Complainant and Colleen Petten.

[19] Colleen Petten testified in regards to her involvement with the Complainant on that day. Her evidence is significant in two respects: firstly, the actions that she

took, and didn't take, on that day and, secondly, with respect to the nature of the complaint that the Complainant made to her about the Accused.

[20] Lisa Goulding worked for the Child Protection Branch in Child, Youth and Family Services and its successor, the Department of Children, Seniors and Social Development. She also gave evidence with respect to her various interactions with the Complainant and the Accused in relation to this incident. Lisa Goulding received a complaint about the Accused's interaction with the Complainant – and her actions in response are relevant.

[21] Renee Haines, a Defence witness, gave some evidence that was relevant to all of the charges, as did Kimberley Walsh– whose evidence was relevant to this and subsequent counts of the Indictment.

[22] Renee Haines' evidence with respect to office practices and procedures, layout of the office space, and furniture that was contained in the office, is of relevance to this, and subsequent counts of the Indictment.

[23] The Accused led documentary evidence in answer to some of the charges against him – together with his recollection of how that related to his defence. The documentary evidence concerns diary notations of the Accused's schedule for the day, the names of clients that he was scheduled to interview and, in some cases, copies of the documents that were executed by the clients and the Accused in relation to their scheduled interviews. These were documents that were allowed to be used by the Defence, subject to the waiver of any solicitor/client privilege by the clients to whom they pertain.

[24] The evidence of Dr. Douglas Nigel Drover relates to Counts 4 and 5. It concerns the capacity of the Accused for penile sexual intercourse.

Count 4

[25] The evidence of Cst. Chad Rogers relates to Count 4. He was called by the Defence. Cst. Rogers arrested the Complainant on a shoplifting charge – in respect of which she sought legal advice from the Accused. The Complainant had given the police a statement concerning her involvement in the shoplifting and was cross-examined concerning facts that she had related concerning the incident.

[26] The Complainant had indicated that, on the night of the shoplifting incident, it was snowing and she was wet and cold. She stated that she waited at the gas station after the shoplifting and two officers, a male and a female, allowed her to sit in the back seat of their police car to warm up.

[27] Cst. Rogers indicated that he, and his male partner, attended the gas station to investigate a report of shoplifting. He indicated that the Complainant was not present when they arrived, but that she telephoned the gas station and he spoke to her. He determined who she was, where she was located and went to her residence in order to retrieve the stolen beer and charge the Complainant and her co-accused with theft.

[28] Cst. Rogers indicated that there was no snow on the night in question, but that it had rained earlier in the evening. He did not invite the Complainant to sit in the back of his police car. His police car was the only one on duty in that neighbourhood at the time.

[29] An Affidavit was tendered from David Neal (the Meteorologist) relating to atmospheric conditions on October 9, 2012. This information was tendered to verify the evidence of Cst. Rogers and to contradict the evidence of the Complainant.

[30] The evidence of Cst. Rogers and David Neal was admissible as an exception to the collateral fact rule since it goes to the Complainant's honesty.

Count 5

[31] The Court heard evidence from the Complainant and the Accused. The Defence also called Inspector Danny Dorion and Sgt. Andrea Bishop – who had met with the Complainant and the Accused at his office immediately before the alleged sexual assault was alleged to have occurred.

[32] The Accused led documentary evidence in answer to the charge together with his recollection of how that related to his defence. He denied any wrongdoing.

Similar Fact Evidence

[33] The Defence made an Application to adduce similar fact evidence – which I had earlier granted on February 22, 2024 (*R. v. Regular*, 2024 NLSC 31). It concerned the propensity of the Complainant to make unfounded allegations of sexual assault against another person in authority.

[34] At paragraph 34 of my decision allowing the Defence's Application to adduce similar fact evidence, I held that there were sufficient similarities between the case before me and the allegations against a police officer (the "Subject Officer") to allow the Complainant to be cross-examined in relation to that relationship.

[35] As a result of the Complainant's allegations, the Serious Incident Response Team ("SIRT") for the Province of Newfoundland and Labrador had undertaken an

investigation. The Defence called the investigating officers, Tom Warren and William Miller, to give evidence with respect to their findings.

[36] I am satisfied, having heard the evidence of the SIRT investigators, that their conclusion that there were no reasonable and probable grounds to believe that an offence had been committed by the Subject Officer was appropriate.

[37] I am satisfied that the incident described by the Complainant which, she indicated, kick-started a sexual relationship with the Subject Officer never occurred, and could not have happened because the Subject Officer was not a police officer until several years after the alleged event.

[38] The Complainant gave a detailed account of how the Subject Officer had stopped a motor vehicle in which she was a passenger, along with others. How he instructed her to meet him at a Mary Brown's restaurant down the road while he arrested the other occupants (whom she named) for possession of drugs – all of whom, she said, were convicted.

[39] After meeting up with the Complainant at the fast-food restaurant the Complainant said that she and the Subject Officer had sexual intercourse. Over time she said that she and the Subject Officer had sexual intercourse about 25-30 times over a number of years.

[40] The evidence of the Complainant, overall, is troubling. There are multiple internal and external inconsistencies in her evidence, and she is prone to pivoting when confronted by an inconsistency. For example, in relation to the similar fact evidence, when it was put to her that the Subject Officer could not have arrested her fellow passengers on the Foxtrap Access Road because he was not yet a police officer, she admitted that this information was not true. She claimed that she was

confused at the time she was giving a statement about this incident – although she gave a detailed description of a sexual encounter with the Subject Officer.

[41] It was the arrest of her fellow passengers that kick-started a long-term sexual relationship according to the Complainant

[42] She gave the names of specific individuals who, she said, the Subject Officer arrested, charged (and were convicted). There is no record of those persons ever having been arrested at that time and place, and none of them have any record for possession of drugs. At their best these can only be characterized as flights of fancy, and they cast a pall of suspicion over all of her testimony.

[43] An investigation was carried out into each instance when the Subject Officer might have come into contact with the Complainant. On one occasion his only involvement was to serve some documents on the Complainant's boyfriend. On the other occasion, the Subject Officer was accompanied by another officer and there was no opportunity for any sort of sexual dalliance.

[44] These inaccuracies are serious. When taken into consideration along with all of the inconsistencies relating to the Complainant's evidence against the Accused, they create significant doubt about the Complainant's ability to remember events and her motivation in relating them. The inconsistencies give me considerable doubt about the veracity of her allegations. I will discuss these matters in greater length later in this decision.

[45] I have taken all the evidence tendered during this trial into careful consideration. For the reasons that follow, I find the Accused not guilty on all Counts in the Indictment.

ASSESSMENT OF THE EVIDENCE

Counts 1 and 2

Context

[46] These charges arose when the Complainant was between 12 and 15 years of age. They both relate to the same incident – and only one incident is alleged during this time period. The Complainant had been apprehended by the Director of the Department of Child, Youth and Family Services.

[47] The Complainant's mother was attempting to regain custody of her daughter. The Complainant testified that her mother picked her up from school at lunch time and took her to a meeting with the Accused. It is during this meeting that the offences in Counts 1 and 2 are said to have been committed.

[48] For the reasons that follow, I have concluded that the Crown has not met its onus in relation to Counts 1 and 2 of the Indictment.

Legal Framework

[49] In addition to the general principles of law that I have outlined in the Introduction, I am aware that the evidence of young children must be viewed in a different context from the evidence of adults who have undergone similar, traumatic experiences. (*R. v. W. (R.)*, [1992] 2 S.C.R. 122)

[50] I acknowledge that children may not be able to give reliable testimony concerning matters that are not of great significance to them – such as time, place and surroundings. However, they should have a good ability to relate what was done

to them, who did it and how they felt about it. I have borne these principles in mind when assessing the Complainant's testimony.

Evidence

Complainant's Direct Evidence

[51] With respect to Counts 1 and 2, the Complainant said that, at the time, she was living in a group home. She had been removed from her parents because of abuse. Her mother picked her up from school one day and they drove to a McDonald's restaurant, near Villa Nova Plaza, on the Conception Bay Highway. They waited around at a parking lot until her mother received a phone call and, then, she said that the Accused pulled up in a car. She indicated that she and her mother were parked in between the Department of Child, Youth and Family Services building and the McDonald's restaurant.

[52] The Complainant said that the Accused walked up to their car and conversed with her mother. She testified that he asked if he could get into the vehicle, and her mother walked away over towards Mr. Fowler's house (which is adjacent to the parking lot).

[53] The Complainant said she was in the front passenger's seat. The Accused got into the driver's side. He talked to her about group therapy and parenting classes. He said that he was there to help her return home. She stated that the Accused was touching her left leg and squeezing her knee cap. He continued talking to her while he groped her and touched her breast area. She said that he was kissing her neck and touching her stomach, legs and arms. She said that he was smelling her neck.

[54] The Complainant said that the Accused was leaned over towards her. She was sitting upright and not saying anything. She had never met him before that time. She said that she was between the ages of 12 and 14 at the time, but she could not remember her age. As a result of her evidence the Crown made an Application to amend the dates in the Indictment to conform to her testimony. The Application was granted.

[55] The interaction between the Complainant and the Accused did not last very long. She indicated that he was talking for about four to five minutes and the groping lasted for about two to three minutes. The groping, she said, was on the outside of her clothing. When he stopped, the Complainant said that the Accused told her that her mother was coming up now. She indicated that she told her mother what had happened later that day.

Complainant's Cross-Examination

[56] In her first recorded statement to Cst. Percey, the Complainant said that she disclosed what had happened in the parking lot to her mother about 20 minutes after it had happened. She said she was silently crying. She said that her mother "didn't do anything".

[57] However, in a later statement, she indicated to Cst. Percey that at no time did she tell her mother what had happened in the parking lot in relation to Counts 1 and 2.

[58] In response to this contradiction, the Complainant indicated that she was really upset, crying a lot and full of anxiety and stress. She said that she may have said that she didn't say anything (to her mother). She said that she was as honest as she could have been, but that she has forgotten a lot of things.

[59] Further, in relation to the contradiction, the Complainant indicated that she has been going to a counsellor. She said that with the counselling, she has been able to put together things that she has blocked out as a coping mechanism. She said that because of counselling, her memory has improved.

Direct Evidence of the Accused – Background Information

[60] The Accused is a lawyer. He has been practicing law since June 13, 1987. He has practiced law in Conception Bay South at two different locations. He is now 72 years of age, married and has two children and four grandchildren.

[61] The Accused graduated from high school in Hampton, in the Province of Newfoundland and Labrador in 1969. He attended Memorial University for three semesters in the School of Social Work. At the age of 19 he went to work as a social worker. He worked as a social worker in Englee, Mary's Harbour, Bonavista and Stephenville. He was then transferred to Clarenville. In June, 1977 he left social work and went back to Hampton to work in his father's saw mill. After working in the saw mill for a year, he sold life insurance for a couple of years. In 1981 he finished his baccalaureate degree in Geography and sold life insurance in Corner Brook for another year before enrolling in Dalhousie's law school in 1983.

[62] The Accused married in 1972. Throughout law school he sold life insurance during nights and on weekends. In 1986 he obtained his LL.B. and articled in St. John's. After finishing his articles he worked with Timothy Chalker Law Office for a year. He then moved to Manuels and has practiced law in his own practice in that community ever since.

[63] The Accused cultivated business interests after moving back to Newfoundland and Labrador – he has a land development business that is still ongoing. He owned 18 apartment buildings in Stephenville at one time. He also operated a vending

machine business, and was the owner of 10 personal care homes. Presently he owns only one nursing home located in Ontario.

[64] Over the years the Accused owned five car dealerships. He has also practiced law fulltime. He stated that he has a busy practice that is mainly focused on real estate, some criminal law, wills and estates. It is a general practice. He typically works 70 to 80 hours a week and spends about 30% of his time on his businesses. The highest number of lawyers that have worked in his firm is four. He has no partners.

[65] The Accused opened his practice in Villa Nova Plaza in Manuels, Conception Bay South in 1988. He remained in that location until 2009 – when he moved into the old Tim Horton's building across the Conception Bay Highway.

[66] In 2001 the Department of Children, Youth and Family Services occupied the building beside the Accused's law office. They moved over to a building across the parking lot from McDonald's some time thereafter.

Direct Evidence of the Accused - Counts 1 and 2

[67] The Accused testified that he knows the Complainant. He made her acquaintance in the course of providing legal services to her parents. The earliest file in which she was involved was in 1997. The files related to child custody and access issues. The Accused represented the Complainant's parents in relation to allegations of child abuse. The children were removed from the home by the Department of Child, Youth and Family Services.

[68] The Accused met the Complainant in September, 2001 when the children were removed from their family home. The Accused used his legal file to refresh his

memory. He indicated that the Complainant's mother came to meet him in September, 2001. The Complainant's mother had contacted him with respect to the Complainant and she brought the Complainant to meet with the Accused.

[69] With respect to the Complainant's allegation that he met her in a parked car near the Department of Child, Youth and Family Services office, the Accused testified that this did not happen. He said that he would never meet with a minor without a parent present because the parent is the person in authority.

[70] The Accused had fairly regular contact with the Complainant's family. He represented the Complainant in relation to a criminal matter in 2003 when she was 14 years of age. Upon reviewing her file, the Accused remembered that he met with the Complainant and attended Court with her. If there were any other instances that he met the Complainant between 2001 and 2003, he cannot remember.

Findings of Fact

[71] The Complainant acknowledged a number of statements that she had given to the police. She indicated that she had tried to be as honest as possible and, also, that she had skimmed through her statements before Court. She said that she had adequate time to review her statements.

[72] The Complainant indicated that she had been using drugs, but that she gave them up at about the time of the Ultramar gas station incident in 2008. She said that she suffers from anxiety and depression and is no good at recounting timelines.

[73] The Complainant acknowledged that drug use may have impaired her memory. She also said that she suffered trauma growing up as a child. Her parents were abusive, and her brother sexually assaulted her. The brother was removed from

and, later, returned to their home. She said that the trauma she has suffered, anxiety and depression have all affected her memory of timelines.

[74] The Complainant acknowledged that drug use may also have affected her memory.

[75] I am concerned about the lack of cohesion in the Complainant's testimony. At one time she will state that something definitely happened (such as making a complaint to her mother about the allegations in Counts 1 and 2). But, in a later statement, she will deny that it happened.

[76] The hallmark of a good witness is one who provides consistent, logical testimony. While inconsistencies on some matters are to be expected, one should not expect to find inconsistencies in relation to material evidence. Where that occurs a trier of fact must remain on guard as far as the witness' credibility and reliability are concerned.

[77] A lack of consistency, especially in material matters, evidences a carelessness with the truth. The Complainant indicated that she has blocked out many memories as a coping mechanism. She said, as a result of counselling, her memory is now better.

[78] Our memories do not improve with the passage of time. Witnesses who believe that this is the case are fooling themselves. If memories have been revived, in this witness as a result of counselling, then I need to be convinced that the revived memories are real. Otherwise, how am I to determine what remembrance is grounded in fact and what remembrance is not?

[79] I have several concerns about the Complainant's version of what transpired in relation to Counts 1 and 2, namely:

a. The incident is described as having taken place in a car, in the absence of the Complainant's mother, in a parking lot adjacent to a McDonald's restaurant;

b. The incident is alleged to have taken place during the noon hour while schools were in session;

c. The incident is alleged to have taken place while the Complainant's mother was waiting for the Complainant outside the vehicle;

d. The incident is alleged to have taken place a stone's throw from the Accused's law office; and,

e. It is alleged that the Accused drove up to the Complainant's vehicle in his own car.

[80] The Accused has no independent recollection of such a meeting. He testified that he would not have engaged in a meeting such as this in the manner alleged. The Accused said that, as a matter of practice, he would not have met with a minor in the absence of a parent. The Accused indicated that he would not have met with a minor in a parked car when his office was so close by. He would have required that the meeting take place at his office.

Findings of Credibility

[81] The Accused gave his testimony in a fair, and forthright, manner. Although there were moments of testiness in his cross-examination, his account was

compelling. He was not caught in any inconsistencies and was able to remember clearly. He was able to determine, with the assistance of his files and diaries, that he had met with the Complainant and her mother in September, 2001.

[82] I find as a fact that the Accused met with the Complainant and her mother in September, 2001 – and that he did so in his office. It makes no logical sense that the Accused would drive the very short distance from his law office to the McDonald's restaurant – in the parking lot of the same strip mall – in order to meet the Complainant and her mother in their car. It does not seem logical to me that the Accused would sexually assault a Complainant at noon hour, in a parking lot, adjacent to a McDonald's restaurant at a very busy time of day while the Complainant's mother is standing outside the car.

[83] Of considerable concern to me is the Complainant's statement that she has repressed many memories as a coping mechanism, and that she is reviving them through counselling. Also concerning is the Complainant's statement that she has forgotten a lot of things. These caveats beg the questions: Are the memories real or imagined? How much store can be placed in them?

[84] The Accused's evidence is logical and believable. The notion that a lawyer would drive from his office to a parked car, perhaps no more than 50 meters distant, to meet with a 12-year-old girl makes no logical sense. I believe the Accused when he stated that he would not interview a young person in the absence of a parent.

Application of Law to Facts

[85] This decision turns on the facts as found. Since I have accepted the Accused's version of events, I must acquit in relation to Counts 1 and 2 of the Indictment.

Conclusion – Counts 1 & 2

[86] Even if I had not accepted the Accused's version of events, I would not have been satisfied that all of the elements of Counts 1 and 2 had been proved to the required standard.

[87] Counts 1 and 2 of the Indictment are dismissed.

Count 3

Context

[88] This incident is alleged to have occurred after the birth of the Complainant's first child in March, 2007. The Complainant attended the Accused's law office accompanied by Colleen Petten. She alleged that, while in the office with the Accused, he digitally penetrated her. She indicated that she made full disclosure of what had transpired to Colleen Petten soon afterwards.

[89] The Accused testified that he met with the Complainant, but it was outside in the waiting area of his office – in the presence of his staff members. He denied sexually assaulting the Complainant. He indicated that, at the time he met with the Complainant, he had another client in his office – and had left that office in order to speak with the Complainant in the waiting area.

[90] The Complainant testified that the Accused had told her not to worry about any legal fees in exchange for sexual favours. However, the Accused produced documentary evidence showing that he had not only billed the Complainant for legal services, but had taken many steps in an unsuccessful effort to collect outstanding fees.

Legal Framework

[91] This is a she said/he said case with vastly differing accounts of what took place. Unlike the allegations in Counts 1 and 2, there is a definite date upon which the offence is said to have been committed – July 24, 2008. This date was recorded in the documentation maintained by the Department of Child, Youth and Family Services (because they were responsible for arranging the meeting between the Complainant and the Accused). It is also recorded in the Accused's office diary for that date.

Evidence

Complainant's Direct Evidence

[92] With respect to Count 3, the Complainant said that, at the age of 15, she ended up in a relationship with an abusive partner who was 17 years her senior. She became pregnant and the Department of Child, Youth and Family Services got involved with the apprehension of the Complainant's child. She testified that she could not afford legal aid and she had no lawyer, but she recalled having the Accused in her life when she was younger. She reached out to him by telephone and told him what was happening. She said that he agreed to represent her. He told her to come to the office so that they could discuss the matter. She indicated that she did so, and that they met in his office a couple of times.

[93] The Complainant testified that the second sexual assault occurred after she had given birth to her first daughter. She said that she had an application for access to her daughter, who had been taken into protection by the Department of Child, Youth and Family Services. She said that the Accused called her to come to his office. She attended at his office with a supervised access worker, Colleen Petten.

[94] The Complainant testified that Colleen Petten waited in the Accused's waiting room while she went into the Accused's office. Each of the Complainant and the Accused were sitting on chairs with wheels. She said that he pulled her towards him.

Her legs, and knees, were inside his legs. She said that he started touching her legs, squeezing her kneecaps and put his hand up her skirt. He then put his finger in her vagina.

[95] The Complainant testified that she told him, “no”, but he persisted. She tried to stop him by squeezing his hand with her knees, to no avail. She then relaxed her legs. The Complainant said that the Accused told her that they had history together. He was going to get her daughter back for her.

[96] The Complainant testified that she couldn’t believe that this was happening again. She had no recollection of how long his finger was in her vagina, or how long his hand was under her skirt.

[97] Before leaving she said that he gave her a hug and he walked out with her to the reception area. She said that she continued with her application for access, but through legal aid.

[98] The Complainant stated that when she left the office Colleen Petten noticed that she was upset. She said that she didn’t want the Department of Child, Youth and Family Services to find out about what happened because she had a long history with them and they had done nothing to help her.

[99] Colleen Petten kept asking the Complainant what was wrong. The Complainant said that she told Colleen Petten everything that had happened. At the time they were walking across the Conception Bay Highway from the Accused’s office, she said, towards the Department of Child, Youth and Family Services.

[100] When she disclosed what had happened she said that Colleen Petten told her to talk to Lisa Goulding at the Department of Child, Youth and Family Services office. She told Colleen Petten that she didn't want them to know.

[101] The Complainant said that she told Lisa Goulding that she and the Accused had had a falling out. She indicated to her that she felt uncomfortable with her lawyer at the time.

Complainant's Cross-Examination

[102] The Complainant told the police, in her statement, that the Accused had told her not to worry about the bill – it would be taken care of. He had done this prior to the meeting at which Colleen Petten attended.

[103] The Complainant remembered telling the police officer that she remembered never getting a bill from the Accused. She acknowledged, on the stand, that this was so. She thought that she had paid $200 for legal fees and remembered the receptionist calling her with respect to outstanding bills before the meeting, on July 24, 2008.

[104] The Complainant acknowledged that there were attempts to collect outstanding accounts from her as late as January 21, 2009. She remembered the secretary reaching out to her numerous times in relation to outstanding accounts. However, she maintained that the Accused told his receptionist to stop contacting her.

[105] In a statement to the police, the Complainant said the meeting of July 24, 2008, was in order to get ready for a court hearing. However, on the stand the Complainant admitted the meeting was not pre-arranged.

[106] There was a crisis – a home visit had to be moved to the child protection office. As a result of information she had received, the Complainant needed a safe place to stay for a couple of days.

[107] The Complainant had said in her statement that she remembered that Colleen Petten was waiting in the waiting room. She also clearly remembered crossing the Conception Bay Highway to go from the Accused's office to the offices of the Department of Child, Youth and Family Services. When contradicted with the fact that his office was not across the street, she continued to maintain that she walked across the street with Colleen Petten.

[108] The Complainant identified the floor plan of the Accused's first office (the one beside the Child, Youth and Family Services office) as the office she had been in on July 24, 2008.

[109] The Complainant acknowledged that she told Colleen Petten everything that had happened inside the office, but she never told Lisa Goulding anything other than she wasn't comfortable with the Accused.

[110] The Complainant acknowledged stating in her statement that Colleen Petten "was pretty hyper about it" and "we told the social worker". She also acknowledged telling Dean Kennedy of Child, Youth and Family Services what had happened but she said, in her statement, that she didn't really tell him everything.

[111] The Complainant explained the inconsistencies on the basis of the passage of time. She said if she got things mixed up it is because of the trauma she has gone through throughout this process.

Colleen Petten's Evidence

[112] Colleen Petten remembered going to the Accused's law office with the Complainant on that day. She specifically remembered that she waited outside the building for the Complainant, and never went inside to the waiting room.

[113] Colleen Petten testified that the Complainant "had a long face". She asked the Complainant what was wrong and, after some urging, the Complainant threw her hands in the air and said, "Men. They are all alike". Colleen Petten said the Complainant told her that the Accused had touched her leg – and demonstrated what the Complainant had shown her – a downward motion on the front of the Complainant's leg.

[114] Colleen Petten testified that she and the Complainant did not cross the Conception Bay Highway in order to go to the Child, Youth and Family Services office. She indicated that their office was beside the Accused's law office.

[115] Colleen Petten did not testify that the Complainant had disclosed to her that she had been digitally penetrated by the Accused.

Direct Evidence of the Accused

[116] The Accused acknowledged that he had involvement with the Complainant in 2007. She had had her first child and there was an issue with respect to the apprehension of the child. The child was premature and was kept in hospital for a number of weeks. With respect to the matter, he attended Court on two occasions – on August 6, 2007 and on July 22, 2008. An itemized invoice was issued with respect to legal services rendered on August 6, 2007. Another invoice was issued with respect to services rendered on July 22, 2008.

[117] The Accused denied telling the Complainant not to worry about paying her account.

[118] The Accused denied that he digitally penetrated the Complainant during an office visit.

[119] The Accused indicated that, at the time the Complainant came to his office, he already had a client in his office. He went to the front of the office and met the Complainant at the counter in the client waiting area.

[120] The Accused believed that Lisa Goulding had informed him that the Complainant wanted to talk to him about her boyfriend. The Accused had been dealing with this issue for a significant period of time. He spoke to the Complainant. He took her file with him to the counter. The file contained the criminal record of the boyfriend. He took out the criminal record and told the Complainant that she was never going to get her child as long as she was with her boyfriend.

[121] The Accused recalled that the Complainant and her boyfriend had a tumultuous relationship. He had not been told what had gone on between them to precipitate this office visit.

[122] The Accused indicated that he would not have spoken to the Complainant about her ongoing problems at the front counter had anyone been waiting in the waiting room. He did not believe it was inappropriate of him to speak to her in front of his office staff.

[123] The Accused identified Exhibit LG-1 as being his business card. It had his cellphone number on the back, written in his handwriting. He did not know that the

business card had been torn up. He indicated that he gave her his personal cellphone number and asked her to call him if required. He did not hear from the Complainant again in relation to the matter. It did not strike him as odd that she didn't do so. He did not think that she was a loyal client.

[124] The Accused identified Exhibit JT-4 as being his office chair. It is the chair that he still uses. He has had it for a long time. He identified the table in Exhibit JT-8 as being a writing table that he used to have his clients execute documents. He had purchased the table from the former Premier and Chief Justice, Clyde Wells.

[125] The Accused identified a coffee table in Exhibit JT-7 as a coffee table that was located in the waiting room of his old and new office buildings. He testified that the coffee table had never been in his office at any time.

[126] The Accused identified an entry in Exhibit RH-2 on July 22, 2008 as being an entry he made in his own handwriting. He stated that he made entries in his calendar himself at times. The electronic calendar system was instituted when the firm moved to the former Tim Horton's building. He testified that he never changed anything in the electronic calendar.

[127] The Accused indicated that office number four in the Villa Nova Plaza building was occupied by Keri-Lynn Power – a lawyer in his office. He would have to walk by Renee Haines' and Keri-Lynn Power's offices to reach his own office.

[128] The Accused testified that being prompt is very important to him. It is not his habit to keep people waiting. The waiting room in the office was very small.

[129] On July 24, 2008 the Accused attended to the execution of a deed by Greg and Rita Butler. This corresponds with a calendar entry in Exhibit RH-2 at 2:00 p.m. of the same date. The Accused witnessed the document, which was marked as Exhibit RH-3.

[130] On July 24, 2008 the Accused's diary notes that he met with the Battens – who signed a mortgage. The mortgage was witnessed by the Accused. He does not have any independent recollection of this meeting. The diary entry indicates that the Battens had an appointment at 4:30 p.m.

[131] Betty Morgan had an appointment at 3:00 p.m. on July 24, 2008. She was one of the owners of Villa Nova Plaza and the Accused's landlady. The Accused was also in a business relationship with Ms. Morgan and they are still business partners to this day. The Accused described Ms. Morgan as a capable business woman – one who demands immediate attention and controls the environment that she is in.

[132] The Accused recognized Exhibit RH-5 as file notes of meetings with clients. It is in his own handwriting. The notes are made on pink paper with a view to distinguishing the paper in the file. They contain notations of the length of time to be billed on each individual matter.

[133] The Accused testified that he was in a meeting with Ms. Morgan when the Complainant arrived at his office. He left his office and met the Complainant at the counter. He had expected the Complainant to arrive at the office before Ms. Morgan arrived for her meeting.

[134] The Accused indicated that Kimberley Walsh was his accountant/bookkeeper for a number of his businesses. He gave the outstanding account relating to the Complainant to Kimberley Walsh to follow up on collection. She reported to him with respect to her collection efforts from time to time.

[135] The Accused indicated that, with respect to accounts receivable, one would have to do a cost-benefit analysis to determine whether it was worth it to pursue the collection of a balance owing. After some time of attempting to collect the Complainant's outstanding account there were no further attempts to collect. The Accused said that he never told the Complainant not to worry about her outstanding accounts. The firm's collection records are documented in Exhibit JT-2.

[136] The Accused had no further contact with the Complainant until 2012.

Cross-Examination of the Accused

[137] With respect to Count 3, the Accused said that meeting with the Complainant at the counter of the office was not perfect but, in reality, that is what happened. He said that the Complainant's child had been born prematurely. The Department of Child, Youth and Family Services had already made the child a ward at the hospital. He testified that he had no recollection of meeting with the Complainant while she was pregnant.

[138] The Accused said that there were major issues with the Complainant wanting to have a family, but no one wanted DL, her partner, to be the father. He said that the Complainant was sincere about wanting to be a mother. He testified that he had no recollection of putting his hand on the Complainant's shoulder but said that comforting actions would not be out of the ordinary for him. He was asked whether that would include comforting hugs and the Accused responded by saying "Not to women. To men, sure".

[139] The Accused denied telling the Complainant not to worry about her bill. He said that he did not render any accounts for the work done in 2012 and 2013. He said that in the circumstances with the Complainant's family, payment was not something that was obviously on his mind. His years in social work had made him soft and, particularly so, where there were children involved.

[140] The Complainant's father had died. There were major problems within the family. Then the stepfather died. The children were seriously abused.

[141] The Accused stated that on July 24, 2008 there was a voicemail from Lisa Goulding's office. He asked them to send the Complainant over. He didn't remember but said that now he knows what it was about – it pertained to DL. He was under the impression that the Complainant was already at the Child, Youth and Family Services office. There had been violence in the Complainant's house that day.

[142] The Accused said it was not uncommon for the Complainant to miss an appointment. He said that her attitude was that she didn't have to be punctual. The Accused testified that Ms. Morgan arrived before the Complainant. He said that his assistant interrupted his meeting with Ms. Morgan. He remembered going to the front counter. He said that it was not likely that Ms. Morgan had arrived early for their meeting. She was always punctual. And, he indicated, that he would not have made Ms. Morgan wait. He was very conscientious with his clients.

[143] The Accused said that, at the counter, he gave the Complainant his business card and his cellphone number. He expected her to call him.

[144] The Accused indicated that a social worker and case manager had escaped from an altercation with DL from the Complainant's house earlier that morning. This is the reason that they were upset. He said that he told the Complainant that she had

to get away from DL or she wouldn't be getting her child back. He has no recollection of her being upset. He absolutely did not meet with her in private and, after talking to her, she left.

[145] The Accused denied digitally penetrating the Complainant in his office.

Direct Evidence of Renee Haines

[146] Ms. Haines was employed by the Accused as Office Manager from 1999 to 2013 and, again, from 2018 to the present.

[147] Ms. Haines testified that their offices were situated in the corner of an "L" shaped building at Villa Nova Plaza until December, 2009 – when they moved across the Conception Bay Highway into their present premises.

[148] Ms. Haines testified that in the first office, situated in the "L" shaped building there was a main entrance, a waiting area for clients, a counter and reception. There were four offices – none of which was a boardroom. She indicated that all of the offices were occupied by lawyers, articling students or herself from 1999 until 2009. In the floor plan that was marked as Exhibit JT-3, Ms. Haines occupied office number three and the Accused occupied office number one.

[149] The Defence, through Ms. Haines, entered exhibit RH-2. This was a redacted photocopy of a page from the Accused's office diary showing, in particular, July 24, 2008. It showed appointments for the Butler's at 2:00 p.m., Ms. Morgan at 3:00 p.m. and the Batten's at 5:00 p.m.

[150] Ms. Haines testified that the Butler's were whited out at the 4:00 p.m. calendar entry and their names were inserted in the entry at 2:00 p.m. She stated that she wrote the names of the Batten's over the whited-out Butler entry. She stated that she did not alter what was in the calendar – other than what she had just described.

[151] Ms. Haines confirmed that the Butler's attended their appointment.

[152] Ms. Haines said that she specifically remembered Ms. Morgan attending her appointment. She was petrified of Ms. Morgan – who is a successful business woman and has a commanding presence. Ms. Haines was working on Letters of Administration for Ms. Morgan's aunt. She needed to get information in order to make up the list of inventory. She remembered that meeting taking place.

[153] Ms. Haines stated that the Accused expected everything to be done on time and correctly. She said that he met with Ms. Morgan and brought her file back to Ms. Haines. He was meeting with Ms. Morgan in office number one. She said that the meeting took well over an hour. She remembered because she was waiting for the file to come back. She remembered asking the Accused why it took so long.

[154] Ms. Haines indicated that she knows the Complainant. She said that the door between the waiting area for clients and the interior of the office space is locked. One must be allowed entry.

[155] Finally, in direct examination, Ms. Haines stated that in 1999 Child, Youth and Family Services had their offices adjacent to the Accused's office.

Cross-Examination of Renee Haines

[156] Ms. Haines has known the Accused since 1987. At that time she worked with Timothy Chalker & Company. She indicated that she and the Accused are not friends and they do not socialize. She is currently the manager of Infinity Holdings and works out of the same building as the Accused's law firm. The law firm is at one end of the building, her office is at the other end.

[157] Ms. Haines indicated the Accused is her employer. She has worked for him for 25 years. She said that if something happens to him, she will retire. She has other sources of income if she is not working for the Accused.

[158] Ms. Haines cannot confirm whether any editing was done to the Microsoft Outlook program that the firm has utilized since moving into the building across the Conception Bay Highway. She said that anyone in the office can make, or delete, entries in the Microsoft Outlook program.

[159] Ms. Haines indicated that the Accused is usually extremely prompt. She indicated that she could tell what would have happened in a day by looking at the files and the billing records. She confirmed his appointments on July 24, 2008. She could not verify whether or not the Accused had spoken with a social worker.

[160] Ms. Haines was directed to Exhibit RH-5 – a pink sheet of paper with the Accused's handwriting – which she recognized. She had not seen the document until a few days before she testified. The last entry in the document related to the meeting with "Betty" and has a time of one hour beside the notation.

[161] Ms. Haines indicated that Ms. Morgan was their landlady. She was attending the office in relation to an estate. It was the only non-commercial file that Ms. Haines had worked on for Ms. Morgan. She indicated that she dealt with Ms. Morgan about a bank account and the notation in Exhibit RH-5 was consistent with her memory.

[162] Ms. Haines was asked whether Ms. Morgan could have attended the office on July 25, 2008. She indicated that, in that case, Ms. Morgan's name would have been whited out on the 24 of July and a new entry made on the 25 of July.

Direct Evidence of Kimberley Walsh

[163] Ms. Walsh worked for the Accused from 2002 until the summer of 2018. She did bookkeeping, administration, accounts receivable, accounting entries and, when required, answered the phones.

[164] Ms. Walsh stated that the office had, perhaps, 20% or so of billings that were unpaid at any given time. She said that very little was written off – she estimated about two to five percent might be written off.

[165] Ms. Walsh tried to call people to pay their accounts. She would send out an overdue letter and then, call again. After a few calls she would prepare a demand letter. After undertaking these collection activities she would consult with the Accused to determine whether the account should be written off, or an action commenced. It was the firm's policy not to take matters under $1,000 to small claims because it wasn't worth the time and expense.

[166] Ms. Walsh identified a number of documents (invoices, reminders and demand letters) that were sent out to the Complainant for legal work that had been carried out on her behalf. She indicated that the Complainant had paid a retainer of $500 on June 4, 2007. A letter was sent to the Complainant, along with an invoice, on August 15, 2007. Subsequently, Ms. Walsh sent out a number of reminders, together with calculations of accrued interest. She also noted the number of times that she either attempted to call the Complainant or was able to connect and talk to her.

[167] Ms. Walsh consulted with the Accused about collection attempts and was advised to keep trying to collect. She sent out a demand letter by registered mail which was picked up on June 24, 2008. Collection attempts continued through the fall of 2008. On December 18, 2008 Ms. Walsh attempted to call the Complainant but the phone was not in service. Another demand letter was sent out in January, 2009 signed by the Accused. It was returned by the post office on February 25, 2009. By the middle of July, 2009 Ms. Walsh had no phone number or address where the Complainant could be reached. She testified that the Accused instructed her, on July 28, 2009 to leave the collection for the time being.

Cross-Examination of Kimberley Walsh (Thompson)

[168] Ms. Walsh has not worked with the Accused's firm since she left in 2018. Occasionally, she will prepare an income tax return for the Accused.

Findings of Fact

[169] I find the following facts:

a. The Complainant attended the Accused's law office for a meeting on July 24, 2008. The meeting was arranged by Lisa Goulding;

b. Colleen Petten came to the meeting with the Complainant, but waited outside the building while the Complainant went inside;

c. Betty Morgan was in the Accused's office when the Complainant arrived, late, for her interview;

d. The Accused interviewed the Complainant at the entry wicket in the waiting room;

e. The Accused met the persons noted in his diary on July 24, 2008, at the times noted, and attended to the execution of various documents;

f. The Complainant did not disclose to Colleen Petten that she had been sexually assaulted in the Accused's office;

g. Colleen Petten's recollection of what was said to her by the Complainant is more accurate than the version offered by the Complainant. To the extent that there are differences, I accept the evidence of Colleen Petten;

h. The description given by Colleen Petten of the interaction between the Complainant and the Accused would not be sufficient to ground a charge of sexual assault;

i. The Complainant and Colleen Petten did not cross the Conception Bay Highway in order to meet with representatives of Child, Youth and Family Services – since the Accused's office was, at that time, located next door to Child, Youth and Family Services. I find that the Complainant's recollection in this regard is mistaken; and

j. The Accused did not forbear the collection of outstanding invoices from the Complainant as alleged by her. I find, instead, that he instructed his office staff to continue collection efforts for well over a year after the accounts were rendered.

[170] I accept the evidence tendered on behalf of the Accused and find, as a fact, that no sexual assault took place on July 24, 2008.

Findings of Reliability and Credibility

[171] The Complainant gave statements to the police, and testified in Court, that the Accused had told her, before July 24, 2008, not to worry about any legal bills. This is not in accord with the evidence of the Accused and Ms. Walsh – who testified that

collection attempts continued for over a year after the accounts had been rendered. I accept, on this point, the evidence of the Accused and Ms. Walsh. There was no forbearance.

[172] I do not accept that the Accused attempted to curry sexual favours by providing free legal services. The evidence points to the contrary conclusion.

[173] The Complainant clearly recalled that Colleen Petten waited in the Accused's waiting room on July 24, 2008 – while she was in the office with the Accused. Colleen Petten testified that she waited outside of the building. I have accepted Colleen Petten's evidence on this point. The Complainant's assertion that Colleen Petten was in the waiting room affects the Complainant's reliability. It brings into question her powers of recall.

[174] The Complainant identified the floor plan of the Accused's office – when it was still located beside the Child, Youth and Family Services office building – as depicting the office where she met on July 24, 2008. That being the case, her evidence that she and Colleen Petten crossed the Conception Bay Highway, after meeting with the Accused, in order to attend at Child, Youth and Family Services is not correct. The Complainant is remembering things that could not have happened. Her reliability and credibility suffers as a result.

[175] The Complainant testified that she told Colleen Petten everything that had happened inside the office. Yet, Colleen Petten's recollection of what was said is markedly different. The dichotomy affects the Complainant's credibility.

[176] The Complainant indicated, in her statement to the police, that Colleen Petten was "pretty hyper about it", and that they told the social worker – Lisa Goulding. Yet, the only action taken by the social worker was to inquire of the Law Society

about the process for making a complaint. I do not find the Complainant's evidence on this point credible. Had a complaint of a sexual assault been made to Lisa Goulding, I am certain she would have contacted the police and not the Law Society.

[177] The Complainant explained the inconsistencies in her evidence on the basis of the passage of time. She stated that if she got her evidence mixed up, it was because of the trauma she has undergone throughout this process. Her explanations do not bolster her reliability and credibility in my opinion. To the contrary, they diminish both.

[178] Overall, I have serious concerns about the extent to which the Complainant truly remembers what took place on July 24, 2008. The internal inconsistencies in her evidence, together with the inconsistencies as against the evidence of others, militate against accepting her version of what transpired.

[179] With respect to Count 3 the Complainant said she made a full disclosure of the sexual assault to Colleen Petten. Colleen Petten's evidence did not substantiate the Complainant's version of events – there was no disclosure of sexual assault made to Colleen Petten. This is an external inconsistency that affects the Complainant's credibility.

Application of Law to Facts

[180] I accept the Accused's version of what transpired on July 24, 2008. I find that he did not interview the Complainant in his office and, therefore, that no sexual assault could have taken place therein as alleged.

Conclusion – Count 3

[181] Count 3 of the Indictment is dismissed.

COUNT 4

Context

[182] The Complainant was charged with shoplifting on October 9, 2012, and sought legal advice from the Accused shortly afterwards. She alleged that the Accused had sexual intercourse with her on the coffee table in his office.

[183] The Accused denied that any sexual assault took place in his office and said that he was, at the time, suffering from erectile dysfunction and was unable to engage in the acts alleged.

[184] Expert evidence was heard from a urologist – who interpreted the Accused's medical chart in relation to the issue of erectile dysfunction.

Legal Framework

[185] While the Count in the Indictment provides a date range when the alleged sexual assault took place, it is clear from the evidence that the Complainant alleged that the sexual assault took place within a few days of her being charged with shoplifting – in the fall of 2012.

[186] One of the issues arising from the evidence heard in relation to this Count is the issue of collateral facts and credibility assessment. The Complainant described certain events and environmental conditions related to the theft from the Ultramar gas station. I allowed the Defence to tender evidence tending to vary and contradict the Complainant's testimony on what would, otherwise, be matters collateral to the core of the charge against the Accused. I will discuss this in a later section dealing with the application of the law to the facts.

[187] The Accused has denied that any sexual assault took place. Therefore, this Count also involves a she said/he said situation. I must be satisfied that the Crown has proven its case beyond a reasonable doubt.

Evidence

Complainant's Direct Evidence

[188] Concerning Count 4, the Complainant testified that she got into trouble with the law. She and a friend were at an Ultramar gas station. While there the Complainant distracted the cashier, and her friend shoplifted an 8-pack of beer. She was charged with theft and called the Accused. She testified that she knew that if she had sex with the Accused, he would be her lawyer.

[189] At the time the Complainant said that she was in a bad place. She had her second child. She was unsure whether her third child had been born. She had no family support, no friends and no guidance. At the time she was partying, drinking and doing drugs like cocaine.

[190] The Complainant called the Accused a couple of days after being charged. She indicated that the Accused invited her to come to the office and said that he would take care of it.

[191] The Complainant said she went to the Accused's office and talked about the charge. He told her that he would get an absolute discharge for her. She said, this time, she knew what was going to happen. She knew that they were going to have sex.

[192] The Complainant said they were standing up when he started groping her. She said that he took her hand and placed it on his pelvic area. She rubbed him and took her clothes off. She said that they had sex on the coffee table in his office.

[193] The Complainant said that she was sitting on the coffee table. She was not wearing underwear. The Accused's pants were down. He climbed on top of her and they had sex. She said that no condom was used, that he penetrated her vagina with his penis and ejaculated in her vagina. She indicated that there was no discussion while they were having sex. He was moaning, but she made no sound. She said that she was disgusted with herself and the situation.

[194] After the sexual encounter, the Complainant said that the Accused got up and went to his desk. He used a paper towel to wipe himself off. He stared at her while she was getting dressed. She said that he told her she was sexy, and that he would see her in Court. At Court she obtained an absolute discharge and she had no further contact with him until the next incident.

Complainant's Cross-Examination

[195] The Complainant did not remember any communication between herself and the Accused from July 24, 2008 until she was charged with stealing beer from the Ultramar gas station.

[196] In relation to the theft incident, she acknowledged that, in her statement, she had indicated that it was "really snowy that night and she was soaked to the bone". The Complainant had said, in her statement, that her friend had stolen the beer and left, but the Complainant had remained at the Ultramar gas station.

[197] In her statement, the Complainant said that a police vehicle was there at the Ultramar gas station and one of the officers asked her if she was cold. She indicated that one of the officers was male, the other a female. She said that she got into the police car to warm up.

[198] On the stand the Complainant testified that she had an explicit memory of being at the Ultramar gas station between 1:00 and 2:00 in the morning. She said she had a clear recollection of staying behind, the police showing up and of her being soaked to the bone. She testified that she remembers the evening "as clear as day".

[199] Counsel brought to the attention of the Complainant the police file - which indicated that a female called the Ultramar gas station while they were attending in relation to the alleged theft. The female spoke to the cashier wondering if they could bring back the unconsumed beer that they had stolen. The file indicated that the police spoke to the female, determined it was the Complainant and obtained her address. They then attended that address, were invited inside by the Complainant and charged the Complainant and her accomplice with theft.

[200] In response the Complainant asserted that she did stay at the store after the commission of the theft. She said that she spoke to the cashier and to the two police officers at that store. She said that she remembered calling the store and speaking with the manager (who was not the cashier she was earlier distracting). She said she remembered getting into the police officer's car. She also remembered the police coming to her apartment.

[201] When advised that the two officers who investigated the theft, Cst. Rogers and Cst. Burry, were both males, she indicated that this was completely false and the Complainant did not agree that she could be mistaken.

[202] The Complainant reiterated that it was wet and snowy. She said it was cold and she was soaked to the bone. She said she remembered that it was cold, wet with snow on the ground.

[203] The Complainant was shown a weather report for October 9, 2012, the date of the Ultramar gas station incident. The chart indicated that the maximum temperature that day was 9°C and the minimum was 6.8°C between 1:00 a.m. and 2:00 a.m. The chart also indicated that there was no precipitation on that date.

[204] The Complainant testified that she gave no false information. What she stated is what she remembers.

[205] The rationale given by the Complainant for obtaining the Accused's legal services was an effort to keep her record clear because of her ongoing issues in relation to children and Child, Youth and Family Services. She indicated that she didn't want anything to interfere with her access to her children. The Accused was going to help her with that, and she knew that if she had sex with him, he would be

her lawyer. The Complainant acknowledged that, up to this point, she had not had sexual intercourse with the Accused.

[206] The Complainant was shown a photograph of a table (Exhibit JT-7). She was not able to say if that was the table that she and the Accused had sex upon. She said that her feet were on the ground during the sexual interaction, but she would have been seated on the table.

[207] The Complainant testified that the sexual intercourse with the Accused took less than a minute. She said that he had a full erection throughout the encounter.

Direct Examination of Cst. Chad Rogers

[208] Cst. Rogers has been employed by the Royal Newfoundland Constabulary since 2010. In 2012 he was on street patrol in the Conception Bay South ("CBS") area. Their practice, at the time, was to patrol independently during the day but with a partner during the night shift.

[209] Cst. Rogers' shift began at 7:30 p.m. on October 8, 2012. His partner was Cst. Burry. He was called to the Ultramar gas station located at 695 Conception Bay Highway at 1:56 a.m. There had been a theft. It was alleged that someone had stolen an 8-pack of Coors Light beer. The perpetrators were not present at the scene.

[210] While Cst. Rogers was in the Ultramar gas station, a female called and advised the clerk that they had taken some beer and wished to return what they had not consumed. Cst. Rogers spoke to the person who called, and she identified herself as the Complainant in this matter. She gave her address to Cst. Rogers.

[211] Cst. Rogers and Cst. Burry attended at the Complainant's residence and, upon entering, noted that there were five Coors Light remaining on a coffee table. Cst. Rogers did not take the two females back to the Ultramar gas station and did not meet with them in the police car. The female suspects were placed under arrest, charged with theft and released on a Promise to Appear.

[212] Cst. Rogers had noted, at the start of his shift, that there was rain and it was 17°C. He had no recollection of it snowing.

Cross-Examination of Cst. Chad Rogers

[213] Cst. Rogers did not recall the ambient temperature between 1:00 a.m. and 2:00 a.m. He could not recall how heavy the rain was falling when he recorded that it was raining earlier.

Re-Direct Examination of Cst. Chad Rogers

[214] Cst. Rogers would have recorded in his notebook if the Complainant had been unable to understand the rights and caution he administered.

[215] Cst. Rogers did not recall any other police cars attending the Ultramar gas station.

Affidavit Evidence of David Neal

[216] David Neal is a Meteorologist with Environment and Climate Change Canada. He has a B.Sc. and a Diploma in Meteorology from Dalhousie University – which he obtained in 2007 and 2008.

[217] Mr. Neal verified, by Affidavit, that a two-page printout from his department's website accurately reflected the weather conditions at 695 Conception Bay Highway on October 9, 2012.

[218] Mr. Neal testified that there was no precipitation at that address between 1:00 a.m. and 2:00 a.m. on October 9, 2012 and that the ambient temperature, at that time, was 10°-12°C. He indicated that there may have been some rain in the area between 9:30 p.m. and 10:30 p.m., but no snow.

Cross-Examination of David Neal

[219] The Crown indicated that it did not wish to cross-examine Mr. Neal.

Direct Examination of Dr. Douglas Nigel Drover

[220] Dr. Drover is a specialist in surgery and urology. He practiced medicine for over 31 years, and retired in June, 2023. Before his retirement he occupied positions as Clinical Head of Urology, Divisional Head, Chief of Surgery and Chief of Staff at Eastern Health.

[221] Dr. Drover had never testified in Court prior to this case. He understood that his responsibility was to the Court, and that he was to provide interpretations that were objective and impartial. He had no connection with the Accused.

[222] I qualified Dr. Drover to give expert opinion evidence in the fields of adult general urology and erectile dysfunction.

[223] Dr. Drover was provided with the Accused's medical records from 2007 to the current day. They included surgical, clinical, x-ray and laboratory medical records together with pharmaceutical prescriptions.

[224] Dr. Drover indicated that Dr. Scott Moffatt was the Accused's physician. He said that he had attended medical school with Dr. Moffatt.

[225] Dr. Drover testified that the Accused first saw Dr. Moffatt, in relation to erectile dysfunction on May 17, 2011. The medical records indicated that the Accused was suffering from decreased libido and had intermittent erectile dysfunction for one year. The Accused was given a sample package of the medication, Viagra, to try.

[226] Dr. Moffatt's diagnosis was predicated upon the history provided by his patient. Dr. Drover indicated that upwards of 48%-60% of men over the age of 60 suffer from erectile dysfunction. He said that the Accused had significant lipid dysfunction from 2007-2017. There were 13 tests conducted over that time showing lipid dysfunction.

[227] Lipid dysfunction is related to high levels of cholesterol in the blood. This can lead to atherosclerosis. Dr. Drover indicated, based on his review of the Accused's medical file, that the Accused could not tolerate the drug used to reduce cholesterol. He is suffering from progressive coronary disease that are evidenced by computerized tomography coronary angiograms.

[228] Erectile dysfunction is linked to cardiac issues. It is a vascular phenomenon. Arteries in the penis have to reach higher than normal blood pressure in order to obtain and maintain an erection. If one has atherosclerosis, the blood flow is affected.

[229] Erectile dysfunction is manageable with counseling, repairing any hormonal dysfunction that might be present (in rare cases) and through organic/vascular treatment (in the majority of cases).

[230] The first line of physical treatment is Viagra. Dr. Drover indicated that erectile dysfunction results in a very hard hit to the male ego. It takes someone with gumption to admit that he cannot get an erection.

[231] Dr. Drover testified that there have been many studies relating to Viagra. The drug must be absorbed through the intestinal tract and then, through the blood. It takes a minimum of 25 minutes and, usually one to two hours before Viagra is effective. The benefits of the drug last between 30 minutes to about four hours. It does not work immediately.

[232] Viagra doesn't work by itself. The patient must be aroused through physical, auditory or visual stimulation. The drug need not be taken every day. It is intended to be taken when the patient intends to have sexual activity – generally once, or twice, a week. The drug stays in the system for about four hours after ingestion.

[233] Environmental factors can influence the ability to obtain, and maintain, an erection. If the patient is experiencing mild erectile dysfunction, it would be possible to perform sexually in a perfect environment. However, in an anxious environment it would be difficult to maintain an erection.

[234] Dr. Drover indicated that taking Viagra 10-15 minutes before it is intended to engage in sexual intercourse would not work.

[235] Dr. Drover was unable to tell, from the medical records, whether the Accused's erectile dysfunction was mild, moderate or severe.

[236] Dr. Drover was asked whether a person who had erectile dysfunction could, spontaneously, have and maintain an erection, engage in sexual intercourse in a law office for one to two minutes to the point of ejaculation.

[237] Dr. Drover said that if the person had mild erectile dysfunction and had taken Viagra one to two hours prior, he could perform. However, without any form of foreplay, engaging in sexual intercourse in the manner described would be challenging.

[238] Dr. Drover indicated that the Accused was given one prescription of 16 tablets for Viagra in May, 2011. He was prescribed a different medication, Cialis 10mg, in 2017 and Cialis 20mg in 2019.

[239] Dr. Drover noted that the Accused's medical records indicated that he complained about leg discomfort.

Cross-Examination of Dr. Douglas Nigel Drover

[240] Dr. Drover reiterated that there are several types of erectile dysfunction: mild, moderate and severe. He stated that if you are suffering from erectile dysfunction, it becomes interwoven with decreased libido. He said that premature ejaculation can occur irrespective of rigidity problems.

[241] Dr. Drover stated that Viagra does not give you an erection. Stimulation is necessary in order to obtain an erection. He said that if the victim put her hand on

the Accused's penis, the resulting sexual stimulation could let him have a response if he had ingested Viagra. Kissing could also provide the needed stimulation.

[242] Dr. Drover acknowledged that his opinions were based on the average individual. He further acknowledged that the Accused could be other than average.

[243] Dr. Drover indicated that if the Accused knew that the Complainant was coming to his office in advance, he could have taken Viagra in anticipation. He said that the ingestion of fatty meals or alcohol would mitigate the beneficial effects of Viagra. He stated that if a patient's erectile dysfunction is progressive, he may not respond. Those suffering from moderate or severe forms of erectile dysfunction would not respond at all.

[244] Dr. Drover confirmed that the Accused had a prescription for Viagra in September, 2011 and that his next prescription was not until 2017. He said that erectile dysfunction does not get better with time. He indicated that Viagra can have side effects such as intense headaches.

[245] Dr. Drover testified, based on the Accused's chart that 10mg of Cialis was prescribed for him in 2017 but it was not effective. The dosage was increased to 20mg as a result.

[246] Dr. Drover acknowledged that he only looked at the records he was provided. He did not determine if what he looked at was 100% of the records.

Re-Direct Examination of Dr. Douglas Nigel Drover

[247] Dr. Drover noted that, for a person with erectile dysfunction, more stimulation would be required to get a satisfactory response. With respect to getting and maintaining an erection to have sexual intercourse within a time frame of a couple of minutes, Dr. Drover said that a person with erectile dysfunction would find it difficult to respond and perform in this time frame, but that it was not impossible.

[248] Dr. Drover indicated that age, lipid dysfunction and the existence of coronary disease were all factors that supported an erectile dysfunction diagnosis.

[249] Dr. Drover indicated that there was no reason to doubt Dr. Moffatt's diagnosis of the Accused. He stated that Dr. Moffatt's handling of the file was beyond reproach.

Evidence of Renee Haines

[250] Ms. Haines was shown Exhibit JT-8 – a picture of a table. She recognized it as a picture of a signing table in the Accused's office. She said that the Accused had the signing table when she started working for him in 1999.

[251] Ms. Haines was also shown Exhibit JT-7 – a picture of a round table. She said that it was never used as a coffee table in the Accused's office but, instead, was used in the client waiting room. She indicated that this table was never in the Accused's office and that there was never a table, other than the one shown in Exhibit JT-8, in the Accused's office.

Direct Evidence of the Accused

[252] On October 30, 2012 the Accused recorded, in his diary, a meeting with the Complainant at 12:30 p.m. in Exhibit RR-3. This was in connection with the Ultramar gas station incident. On the following day the Accused attended in Court and picked up a disclosure package from the Crown counsel. On November 15, 2012 the Accused attended in Court on behalf of the Complainant. The matter was set for trial on March 4, 2013 at 11:00 a.m. The electronic diary system recorded that the Accused met with the Complainant on May 23, 2013 and that the matter was set for Court on May 24, 2013. He testified that he met with the Complainant and, then, typed an email to the Crown counsel.

[253] The Accused indicated that he provided legal services to the Complainant in relation to the Ultramar gas station incident between October 9, 2012 and May 24, 2013. On the scheduled date for trial the Complainant did not attend, and the trial had to be re-scheduled. The Accused eventually obtained an absolute discharge for the Complainant.

[254] The Accused denied having sexual intercourse with the Complainant on the coffee table. He denied that he was able to attain an erection quickly and to ejaculate. He testified that the allegations were not true.

[255] The Accused testified that no invoices were rendered for these services because it wasn't worth the bother. He stated that he had a lengthy relationship with the Complainant's family. He was sympathetic to their circumstances.

[256] The Accused spent a total of two to two and one half hours on the file. At that time he was still providing legal services to the Complainant's mother. He indicated that it was common practice among lawyers to do some legal work without

compensation. It was a means of keeping an ongoing relationship with clients and *pro bono* work was a loss leader. It would eventually lead to something such as personal injury files, agreements, contracts or mortgages – all fee generative work where you could make some money.

[257] The Accused testified that personal injury work is, perhaps, 35% of his practice. There was nothing unusual, he said, in the manner that he dealt with the Complainant.

[258] The Accused testified that Dr. Moffatt was his family doctor. He was shown a clinic note dated May 17, 2011. The note had been prepared by Dr. Moffatt. The Accused said that he remembered meeting him in relation to problems he was experiencing with erectile dysfunction and impotence. He was diagnosed with sexual dysfunction and hyperlipidemia.

[259] The Accused testified that the problem had been ongoing for a long time before he went to see Dr. Moffatt. He laboured with the decision to go and see him. He was, at the time 59 years old. Dr. Moffatt's note (Exhibit DD-1) indicated that he had suffered from decreased libido for a year. He reiterated that he had hesitated for a long time before seeing Dr. Moffatt about the problem.

[260] The Accused recalled getting a prescription on September 8, 2011 for 16 50mg Viagra pills. He used the prescription but began having severe pain in his legs and gave up taking the Viagra. He continued to have problems with erectile dysfunction. Eventually, the Accused was given a prescription for Cialis. There is no evidence of any prescriptions of medication for erectile dysfunction between September 8, 2011 and November, 2017. He testified that between those two dates his erectile dysfunction did not cure itself.

[261] The Accused denied ever taking Viagra to meet with the Complainant.

Cross-Examination of the Accused

[262] It was put to the Accused that in Dr. Moffatt's record it indicated that the erectile dysfunction was intermittent, not continuous. The Accused explained that it is something that one is embarrassed about. He said that this is the reason why he did not tell the doctor the true extent of the problem.

[263] With respect to his reporting of decreased libido, he indicated that his sex drive was significantly less than he had previously. He stated that the change was gradual – to the point that there was none.

[264] The Accused said that he had a lot of stresses in his life. He thought that he had cancer in 2008. He was diagnosed with having a kidney problem in 2007-2008.

[265] In response to a notation in his medical file that his erectile dysfunction had improved, the Accused did not recall telling Dr. Moffatt that his erectile dysfunction had improved on September 9, 2011. He did not recall his erectile dysfunction improving.

[266] The Accused indicated that, with respect to his prescription record, this is the only pharmacy that he dealt with. It was noted in the pharmaceutical records that he had a prescription for Viagra on September 8, 2011 followed by prescriptions for 10mg Cialis on November 17, 2017 and 20mg Cialis on December 15, 2019, November 24, 2020 and July 2, 2021. The Accused acknowledged that whatever is in those records is correct.

[267] The Accused stated that he discontinued the use of Viagra because it caused him leg pain. He could not tolerate the pain when he was trying to sleep. It happened whenever he used the medication. He said that Viagra was useless to him because of the side effects.

[268] The Accused denied taking Viagra when he knew that the Complainant would be coming to his office. He said that this was absolutely not true. With respect to his office being a comfortable environment for sex, he testified that he was not comfortable having sex in his office.

Findings of Fact

[269] I find that the Complainant contacted the Accused, in October, 2012 to represent her with respect to a charge of shoplifting.

[270] I found Renee Haines to be an honest, straightforward witness. She answered questions directly and to the point. I believe her testimony that the only table in the Accused's office was a writing desk – somewhat akin to a dining room table.

[271] The Complainant testified that she engaged in sexual intercourse with the Accused while seated on a coffee table. She described her legs being on the floor while the sexual activity was taking place. It is obvious that sexual activity could not have occurred in the manner described if the table being utilized was the writing desk – since the Complainant's feet could not have touched the floor while seated on the writing surface.

[272] I find, as a fact, that the Accused was suffering from erectile dysfunction as early as 2011. However, I do not have sufficient information to determine whether

the Accused's erectile dysfunction was mild, moderate or severe. Accordingly, the evidence of Dr. Drover does not convince me that the Accused was incapable of obtaining, and maintaining, an erection.

[273] I believe the Accused that Viagra caused him to suffer from leg pain and, as a result, that he discontinued its use until he obtained alternative medications in 2017.

[274] I find as a fact that the Accused did not ingest Viagra in anticipation of the Complainant's visits to his office in 2012. I believe the Accused when he said that Viagra caused him severe leg pain and he discontinued its use. This is borne out by his medical chart – he complained to Dr. Moffatt, who noted, that Viagra was causing him leg pain.

Findings of Credibility

[275] The Complainant described a sexual encounter with the Accused in intimate detail – including where and how she was located, and where the Accused was located. Her version of events suffers, however, when viewed in the light of the evidence of Renee Haines, there was no coffee table. If there was no coffee table, a sexual encounter could not have taken place upon it.

[276] As indicated earlier, Renee Haines was a fair and reliable witness. She indicated that she was not dependent upon the Accused in any way. If she ceased working for the Accused, she had many alternative avenues to earn a living. She did not consider that she and the Accused were friends. They did not socialize together.

I was struck by her independence and find no reason to diminish her testimony. Ms. Haines had no reason to tailor her evidence in the Accused's favour.

[277] I believe the Accused when he indicated that he never had a coffee table in his office. I believe the Accused when he indicated that he did not sexually assault the Complainant in his office. I believe that the Accused had problems with erectile dysfunction and that he sought medical assistance in respect of it. As noted, however, I do not have sufficient evidence to determine that the Accused was incapable of sexual intercourse.

Application of Law to Facts

[278] It is incumbent upon the Crown to prove all material elements of the charged offence beyond a reasonable doubt.

[279] Based upon my findings of fact, and credibility, I am not convinced beyond a reasonable doubt that a sexual assault occurred as described by the Complainant. The facts lead me to believe that no sexual assault could have occurred in the manner suggested by the Complainant.

Conclusion – Count 4

[280] Count 4 of the Indictment is dismissed.

Count 5

Context

[281] The subject matter of Count 5 in the Indictment occurred before the matters alleged in Count 4.

[282] The Complainant had hosted a party at her residence. One of her guests was severely assaulted, and the police were attempting to interview the Complainant to further their investigation.

[283] The Complainant contacted the Accused and wished to have him facilitate the meeting with the police. The Accused did so and a meeting was scheduled at the Accused's office on September 26, 2012. The Complainant, Accused and two police officers attended the meeting.

[284] The Complainant alleged that the Accused sexually assaulted her following the meeting with the police officers.

Legal Framework

[285] The Complainant and the Accused differ with respect to what transpired after the meeting concluded with the police officers. In order to convict, I must be satisfied beyond a reasonable doubt that the Crown has proven every element of the offence.

Evidence

Evidence of Renee Haines

[286] Ms. Haines said that when the plans for their new office space in the old Tim Horton's building (across the Conception Bay Highway from the Villa Nova Plaza) were drawn up, they called one of the offices a "boardroom". There is a "U" shaped

desk in that office that has three sides to it – with a computer and keyboard in the bottom of the "U".

[287] Ms. Haines identified the office that they moved into – across the Conception Bay Highway – in December, 2009. She said that the photograph marked as Exhibit JT-9 depicted the office as it looked in 2012. It was renovated in 2017. She described the interior. She stated that there is a main entrance on the right-hand side of the building. There is a glass porch and a glass door leads to the waiting area.

[288] Looking at the building from the outside, the first window on the right-hand side belonged to Keri-Lynn Power, an associate with the Accused's firm. The next set of windows was the boardroom, followed by the last set of windows – which belonged to the Accused's office. She said that all the windows had horizontal, wooden blinds.

[289] Ms. Haines then was shown Exhibit JT-10, a floor plan of the office building, which she identified. The office that she had earlier referred to as the "boardroom" was, she said, never used as such. She indicated that Kimberley Walsh occupied that office. She said that the boardroom was always occupied as an office. In 2012 a law student occupied the office from May 24 until Labour Day.

[290] The "boardroom" had double doors that were normally open unless the occupant was interviewing clients. Ms. Haines said she was 100% certain that there were never any locks on the doors of the boardroom.

[291] In the Accused's diary for September 26, 2012 is a diary entry for the Complainant and police officers. It is followed by an entry for Holly Serafinchion. The page evidencing these entries was entered as Exhibit RH-7.

[292] Exhibit RH-7 shows a meeting scheduled between the Complainant and police officers at 3:30 p.m.

[293] Exhibit RH-7 also contains an entry for a meeting scheduled for Holly Serafinchion at 4:30 p.m. Marked as Exhibit RH-8 was a separation agreement, identified by Ms. Haines, relating to Holly Serafinchion. Ms. Serafinchion executed the separation agreement on September 26, 2012.

[294] Ms. Haines indicated that she has never been asked to add, edit or delete anything in the electronic calendar. She said that the diary is used for invoicing and tracking time.

Complainant's Direct Evidence

[295] The Accused arranged for a meeting between the Complainant and some investigating police officers at his office. The Complainant indicated that she attended the meeting in the Accused's boardroom. After the meeting the police left. The Complainant said that the Accused shut the door and locked it. She said that he began to rub her arm – at which point she said she knew what was happening and gave in.

[296] The Complainant testified that she pulled her pants down. The Accused turned her around against the table and they had vaginal intercourse. The sexual activity lasted for perhaps a couple of minutes.

Complainant's Cross-Examination

[297] The Complainant remembered a big boardroom table.

[298] It was suggested to the Complainant that the "boardroom" was, in fact, someone else's office – with a computer, books, files and doors that did not lock. She indicated that this did not change her recollection of events.

Direct Examination of Sgt. Andrea Bishop

[299] Sgt. Bishop testified that their meeting with the Complainant and the Accused commenced at 3:46 p.m. on September 26, 2012 and concluded at 4:28 p.m.

Direct Examination of the Accused

[300] The Accused could not remember the details of the meeting with the police. He remembered what the Complainant was going to be interviewed about. A meeting had been scheduled on an earlier date, but the Complainant had failed to attend. The meeting of September 26, 2012 was the second meeting that had been organized.

[301] This meeting took place in the Accused's office space in the old Tim Horton's building – across the Conception Bay Highway.

[302] The Accused denied sexually assaulting the Complainant on September 26, 2012.

[303] The Accused testified that he did not render any accounts for services in relation to either the shoplifting charge or the meeting with police because it wasn't worth the bother. He had a lengthy relationship with the Complainant's family. He said that he was sympathetic to their circumstances. He indicated that he spent about a couple of hours on the file. At the time he was still providing legal services to the Complainant's mother. He said that it was common practice for lawyers to do some legal work without receiving compensation. Providing services for free was a means of keeping an ongoing relationship with clients because, ultimately, it would lead to something like a personal injury file, agreements or mortgages – which would be fee generative.

Cross-Examination of the Accused

[304] The Accused indicated that he had a lot of stressors in his life. In 2008 he thought he had cancer, and in 2007-2008 he was diagnosed with a kidney problem.

[305] The Accused did not remember telling his family physician that his erectile dysfunction had improved in 2011. The Accused indicated that he did not remember his erectile dysfunction improving.

[306] The Accused stated that he only dealt with one pharmacy. All of his pharmaceutical records are located at that pharmacy, and they are correct. The Accused had a prescription for Viagra on September 8, 2011 but no other prescriptions for drugs related to erectile dysfunction until November, 2017.

[307] The Accused denied taking Viagra in advance of meetings with the Complainant. He denied any sexual encounters with the Complainant at any time.

Findings of Fact

[308] I find, as a fact, that the Accused's law office did not have a boardroom in 2012. The office was, in fact, occupied by various members, from time to time, of the Accused's staff.

[309] I find that the "boardroom" did not have a boardroom table. Rather, the boardroom had a "U" shaped desk with a computer located upon it.

[310] I find that the doors to the boardroom had no locking mechanism and could not have been locked by the Accused preparatory to a sexual assault.

[311] I find that the meeting with the Complainant and the police took place in the Accused's office, not in the boardroom.

[312] I find that the Accused attended to his client, Holly Serafinchion, upon concluding the meeting with Inspector Dorion and Sgt. Bishop.

Findings of Credibility

[313] I have serious concerns with respect to the Complainant's recollection of events concerning this Count. She was adamant that, when the police officers left, the Accused locked the doors to the boardroom and, then, proceeded to have sex with her at the boardroom table.

[314] There was no boardroom. There was no boardroom table. The office known as the “boardroom” had no locks.

[315] When a witness is adamant that some things were exactly so, and it is later discovered that the witness’ recollection is not borne out by the facts and is wrong, the trier of fact has no option but to entertain reasonable doubts about the culpability of the Accused person.

Application of Law to Facts

[316] I believe the Accused’s evidence that he did not sexually assault the Complainant.

Conclusion – Count 5

[317] Count 5 of the Indictment is dismissed.

CONCLUSION

[318] I am not satisfied, beyond a reasonable doubt, that the Accused committed any of the offences with which he is charged.

[319] All of the charges against the Accused are hereby dismissed.

VIKAS KHALADKAR
Justice