

CANADA / JUDGMENT

R. v. V.H.V.R.**2025 BCSC 897****COURT**

Supreme Court of British Columbia

DECIDED

25 April 2025

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2025 BCSC 897 R. v. V.H.V.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. V.H.V.R.,

2025 BCSC 897

Date: 20250425

Docket: 33321-2

Registry: Vancouver

Rex

v.

V.H.V.R.

Corrected Judgment: The text of the judgment was corrected at paragraph 114 on August 28, 2025; the cover page was corrected on August 29, 2025; and paragraphs 5, 7, and 9 were redacted for publication purposes on September 4, 2025.

Restriction on publication: A publication ban has been mandatorily imposed pursuant to s. 486.4(1) of the Criminal Code of Canada, restricting the publication, broadcasting, or transmission in any way of the evidence that could identify the complainants, C., A., M. and N. This Publication ban applies indefinitely unless otherwise ordered by the court.

The Honourable Madam Justice Duncan

Oral Reasons for Judgment

Counsel for the Crown

(appearing via teleconference):

D.J. Pruijm

Counsel for the Accused:

D.L. Karp

Place and Date of Trial/Hearing:

Vancouver, B.C.

November, 25, 26, 27, 28,

December 2, 4, 16, 17, 18,

19, 2024, January 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 25, 2025

- [1] THE COURT: The accused, V.H.V.R., is charged with three counts of sexual assault contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46, three counts of sexual touching of a person under the age of 14 years contrary to s. 151; and one count of sexual touching of a young person in a relationship of trust or dependency with him contrary to s. 153. The offence dates are between November 2005 and January 2022.
- [2] Two of the complainants, C. and A., are the accused's stepdaughters. One, N. is his biological daughter. M., who gave evidence during a similar fact voir dire and at trial, is the accused's stepdaughter.
- [3] I will set out the charges on the indictment as they were amended during trial along with the birthdates of each complainant, as their ages at various times are relevant to the elements of some of the offences.
- [4] Count 1 and Count 2 as amended during the course of the trial are:

Count 1

[V.H.V.R.], from the 16th day of November 2005 to the 30th day of September, 2010, inclusive, at or near Vancouver, in the Province of British Columbia, did sexually assault C.D.A., contrary to Section 271(1) of the Criminal Code.

Count 2

[V.H.V.R.], from the 16th day of November 2005 to the 30th day of September, 2010, inclusive, at or near Vancouver, in the Province of British Columbia, did, for a sexual purpose, touch, directly or indirectly, with a part of his body or with an object, the body of C.D.A., a person under the age of fourteen year, contrary to Section 151 of the Criminal Code.

[5] C.'s date of birth is [redacted] 1995. She was between 10 and 14 years of age during the timeframe in Count 1 and then 10 and 13 years of age during the timeframe in Count 2.

[6] Counts 3, 4, and 5 are:

Count 3

[V.H.V.R.], from the 1st day of May, 2008 to the 24th day of June, 2020, inclusive, at or near Vancouver, in the Province of British Columbia, did sexually assault A.D., contrary to Section 271(1) of the Criminal Code.

Count 4

[V.H.V.R.], from the 1st day of May, 2008 to the 4th day of June, 2018, inclusive, at or near Vancouver, in the Province of British Columbia, did, for a sexual purpose, touch, directly or indirectly, with a part of his body or with an object, the body of A.D., a person under the age of sixteen years, contrary to Section 151 of the Criminal Code.

Count 5

[V.H.V.R.], from the 5th day of June, 2018 to the 4th day of June, 2020, inclusive, at or near Vancouver, in the Province of British Columbia, being a person in a position of trust or authority towards a young person, A.D., or a person with whom that young person is in a relationship of dependency, did, for a sexual purpose, touch, directly or indirectly, with a part of his body, the body of that young person, contrary to Section 153 of the Criminal Code.

[7] A.'s date of birth is [redacted] 2002. She was between five and 18 years of age during the timeframe of Count 3, five and 15 during the timeframe of Count 4, and between 16 and 17 during the timeframe of Count 5.

[8] Counts 6 and 7 are:

Count 6

[V.H.V.R.], from the 1st day of January, 2020, to the 31st day of January 2022, inclusive, at or near Vancouver, in the Province of British Columbia, did sexually assault N.V., contrary to Section 271 of the Criminal Code.

Count 7

[V.H.V.R.], from the 1st day of January, 2020, to the 31st day of January 2022, inclusive, at or near Vancouver, in the Province of British Columbia, did, for a sexual purpose, touch, directly or indirectly, with a part of his body or with an object, the body of N.V., a person under the age of sixteen years, contrary to Section 151 of the Criminal Code.

- [9] N.'s date of birth is [redacted] 2008. N. was between the ages of 11 and 14 in the timeframe of Count 6 and the same ages in the timeframe of Count 7.

The Position of the Crown

- [10] Mr. Pruim, Crown counsel, maintains that the accused was the head of the household who created a sexualized atmosphere by making sexual comments to the complainants, asking about masturbation, making them massage his legs, showing pornography, entering their bedrooms at night, and staring at their breasts. In that sexualized context, the accused engaged in a variety of physical contact with the complainants, including touching their buttocks (all complainants) and massaging their breasts (C. and A.), which conduct he maintains was clearly sexual in nature.
- [11] The Crown further submits that the extrinsic similar fact evidence of the accused's guilty plea in 2012 to sexually assaulting M. by touching her buttocks is powerful proof that the same conduct in relation to C., A., and N. was sexual in nature.
- [12] The Crown maintains that the accused engaged in other clearly and overtly sexual acts such as touching C.'s vagina as she woke from a dream, touching C.'s crotch area in the shower as he cleaned her off after she passed out from drinking too much alcohol, and pressing his erection against C.'s back while they spooned on the couch.

Position of the Accused

- [13] Mr. Karp, counsel for the accused, takes the position that the butt touching was benign, the act of a loving father figure. Neither the complainants' mother nor her stepbrother, both of whom testified, saw anything untoward between the accused and any of the complainants. The breast massage of C. was done at her request and under the mother's supervision. The evidence of the other alleged sexual acts by all of the complainants was, in Mr. Karp's submission, unreliable.
- [14] The defence relies on the fact that there was a family meeting with Ms. A., the mother of the complainants, around the time the police investigation began in early 2022, which calls the reliability and indeed the veracity of the accounts into question.

- [15] In brief summary, the defence theory is that C. and M. despised the accused and worked to alienate their mother from him by putting a sexual spin on benign conduct or making up things that did not actually happen. Details exchanged at the family meeting in March 2022 then coloured the accounts of A. and N. and may have influenced them to make a complaint to align with their older sisters, C. and M. The shadow of collusion hangs over the credibility and/or reliability of the complainants.

Legal Principles

Burden of Proof

- [16] The accused is entitled to the presumption of innocence unless and until the Crown has proven the offences charged beyond a reasonable doubt. This is particularly important to keep in mind in this case given my decision to admit the accused's guilty plea to the sexual assault of M. as similar fact evidence and to permit some consideration of count-to-count evidence.
- [17] The similar fact reasons are indexed as 2024 BCSC 2356, and the following summarizes the scope of the ruling:

Summary

- [88] In summary, the accused's prior conviction in relation to M. is admitted to prove the actus reus and rebut the potential defence of innocent association on all counts.
- [89] The evidence of all the complainants about the accused's unwanted contact with their buttocks is admitted across all counts.
- [90] M.'s evidence of the accused massaging her breasts is admissible to support C.'s credibility in relation to similar conduct.
- [91] The evidence of M. and C. is not admissible to support A.'s evidence of breast touching during a back massage.
- [92] M.'s evidence of the accused lying on top of her on two occasions is not admitted in relation to N.'s evidence that the accused laid on top of her.
- [18] While I described the proceedings in relation to M. as a prior conviction in the context of the voir dire ruling, the accused received a conditional discharge. It is more accurate to describe the proceedings as an acknowledgment of guilt in relation to M.

Assessing Credibility

- [19] In assessing the evidence of a witness, judges assess both credibility and reliability. Mr. Justice Watt described these two concepts in *R. v. H.C.*, 2009 ONCA 56, at para. 41:

Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe;

ii. recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).

[20] In addition, assessing the evidence of C. requires consideration of the fact that, while she testified as an adult, she was speaking of events that occurred to her in her childhood. In *R. v. W.R.*, [1992] 2 S.C.R. 122, McLachlin J., as she then was, observed for the court:

every person giving testimony in court, of whatever age, is an individual, whose credibility and evidence must be assessed by reference to criteria appropriate to her mental development, understanding and ability to communicate. But I would add this. In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

[At p. 134; emphasis added.]

[21] I am mindful that, when I assess the credibility and reliability of the defence witnesses, if their evidence leaves me with a reasonable doubt on any of the counts, the accused must be acquitted.

Elements of the Offences

Sexual Assault

[22] In *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, the court explained the actus reus and mens rea of the offence of sexual assault. As to actus reus, the majority said:

25 The actus reus of sexual assault is established by the proof of three elements: (i) touching, (ii) the sexual nature of the contact, and (iii) the absence of consent. The first two of these elements are objective. It is sufficient for the Crown to prove that the accused's actions were voluntary. The sexual nature of the assault is determined objectively; the Crown need not prove that the accused had any mens rea with respect to the sexual nature of his or her behaviour: see *R. v. Litchfield*, 1993 CanLII 44 (SCC), [1993] 4 S.C.R. 333, and *R. v. Chase*, 1987 CanLII 23 (SCC), [1987] 2 S.C.R.

293.

26 The absence of consent, however, is subjective and determined by reference to the complainant's subjective internal state of mind towards the touching, at the time it occurred: see *R. v. Jensen* (1996), 1996 CanLII 1237 (ON CA), 106 C.C.C. (3d) 430 (Ont. C.A.), at pp. 437-38, aff'd 1997 CanLII 368 (SCC), [1997] 1 S.C.R. 304, *R. v. Park*, 1995 CanLII 104 (SCC), [1995] 2 S.C.R. 836, at p. 850, per L'Heureux-Dubé J., and D. Stuart, *Canadian Criminal Law* (3rd ed. 1995), at p. 513.

[23] As to mens rea:

41 Sexual assault is a crime of general intent. Therefore, the Crown need only prove that the accused intended to touch the complainant in order to satisfy the basic mens rea requirement. See *R. v. Daviault*, 1994 CanLII 61 (SCC), [1994] 3 S.C.R. 63.

42 However, since sexual assault only becomes a crime in the absence of the complainant's consent, the common law recognizes a defence of mistake of fact which removes culpability for those who honestly but mistakenly believed that they had consent to touch the complainant. To do otherwise would result in the injustice of convicting individuals who are morally innocent: see *R. v. Creighton*, 1993 CanLII 61 (SCC), [1993] 3 S.C.R. 3. As such, the mens rea of sexual assault contains two elements: intention to touch and knowing of, or being reckless of or wilfully blind to, a lack of consent on the part of the person touched. See *Park*, supra, at para. 39.

Sexual Touching - Sections 151 and 153

[24] Sexual assault is a general intent offence. Sexual interference is a specific intent offence that requires the Crown to prove beyond a reasonable doubt that the accused touched the complainant for a sexual purpose: *R. v. Campbell*, 2023 BCCA 19, at para. 40.

[25] Section 153 requires proof of the additional element of trust or authority towards the complainant. There is no issue that the accused was in a position of trust or authority towards the complainants as their stepfather or father.

[26] In *R. v. D.M.*, 2022 BCCA 120, the Court of Appeal explained the ways in which a sexual purpose can be proved:

[34] Whether an accused touches a complainant for a sexual purpose can be established by direct evidence, by circumstantial evidence or from the nature of the touching itself: *R. v. Morrissey*, 2011 ABCA 150 at para. 21; *United States of America v. Wilcox*, 2015 BCCA 39 at paras. 12-13; *R. v. Langevin*, 2016 ONCA 412 at para. 24. One aspect of such direct or circumstantial evidence can be the words used by an accused either when the touching occurs or more broadly in the general circumstances that surround the conduct in issue.

[27] In *D.M.*, sexualized comments by the accused to the complainant provided context and circumstances that could properly be taken into account by the trial judge in determining whether the conduct was for a sexual purpose: para. 37.

The Evidence

General Background Circumstances

- [28] Ms. A., the mother of the three complainants and the similar fact witness, M., was a defence witness. Some aspects of her evidence are useful to review at this point to establish the home environment in which the complainants were raised.
- [29] Ms. A. was born in Toronto, but moved to South America with her parents when she was six. She was married at 18 and had C. and M. with her first husband. They separated when she was 20. Ms. A. gave birth to A. in 2002 and A. has a different father than C. and M.
- [30] Ms. A. moved back to Canada in 2004 and lived with her parents in Vancouver. She met the accused that year. They married in April 2006 and moved in together at an apartment on Alberni Street, The Lions.
- [31] C. and M. called the accused by a shortened version of his first name. A. called him "Dad".
- [32] Ms. A. received a diploma in addiction work in 2005. She stopped working in 2008 due to a traumatic incident at work. The incident triggered a suicide attempt while she was pregnant with N. Since 2008, Ms. A. has been a stay-at-home parent. She has been diagnosed with several mental health issues and has been hospitalized on a number of occasions.
- [33] In addition to the complainant N., Ms. A. has four other children with the accused, two daughters and two sons, who are currently between the ages of seven and 14. She is separated from the accused, but he supports her and the four youngest children financially.
- [34] Ms. A. described the accused as a strict father. He insisted on a clean house and put limits on who the girls could socialize with and when they could go out as they got older. Ms. A. said C. reacted negatively to the accused's parenting style whereas M. and A. did not complain and, over the years, her three eldest daughters seemed to get used to it.

The Crown Witnesses

C.

- [35] C. was 29 years of age at trial and the eldest in her family. Her sisters, in descending order of age, are M., A., and N., along with two younger sisters and two younger brothers who were not witnesses at trial. C. lives in South America with her children. She has not seen the accused since she left Vancouver for South America when she was 14 and has not spoken to him since she was 19 or 20.
- [36] The first time C. felt uncomfortable about the accused occurred when the family lived in The Lions building. C. shared a room with M. and A. C. had the top bunk, M. was in the bottom bunk, and A. had a separate bed in the room. C. said the accused would come into their room almost every night and cover her if she was not covered with the blanket. He would tell her she was sleep talking or yelling.

The Nighttime Touching Incident

- [37] One night when C. was 10 years old and in grade six, she woke up and felt a throbbing sensation in her vagina. She was confused about it at the time, but realized later she had an orgasm. The accused was in the room and his hand was on or near her thigh. Her nightgown was up to her belly and he covered her quickly when she woke up and left the room. The next morning the accused asked her if she remembered she had been sleep talking.

Questions About Masturbation

- [38] C. described another incident with the accused when she was about the same age as the nighttime touching incident. She came out of the shower and he asked her if she knew how to masturbate or had started to masturbate. C. said no and he encouraged her to try it and showed her how to change the water temperature to feel more pleasure. He told her she could rub her fingertips on her nipples and vagina and use the showerhead to give her different kinds of pleasure.
- [39] After that, C. said the accused frequently, she estimated weekly, asked her when she came out of the shower if she had masturbated or touched herself.

Sex-Themed Books and Videos

- [40] C. said the accused gave her a book in Spanish about a man who had a sexually transmitted disease from having sex with multiple women. She was 10 or 11. He told her it was to practice her Spanish and for her education. At that point, she had not learned about sex in school or spoken with her mother about it.
- [41] C. said the accused made her watch pornography, specifically cartoon characters having sex. M. was present and saw the pornography as well. C. recalled this happened when they lived in The Lions.

Massages

- [42] Around the same time as the events just described, when C. was about 10, the accused began asking her for massages. He would tell her he was tired from work and ask her to massage up his leg. He asked C. to massage close to his penis area with lotion while he was wearing boxer shorts.
- [43] Sometimes C. would massage one leg and M. would massage the other. C. felt "creeped out". The accused's requests for massages continued until she left for South America when she was 14.

The Couch Incident

- [44] C.'s family moved from The Lions to the West End of Vancouver, first Davie Street, then a house on Barclay, and then to Yaletown near the Roundhouse. While they were living at the Barclay house, when C. was 12, she recounted an incident when she was lying on the couch trying to nap while the accused was lying behind her. She felt him poking her lower back and butt area with what she believed to be his erect penis. She was certain it was not his hand. Nothing was said and she pretended to be asleep because she was in shock.

Breast Massages

- [45] When the family moved to Yaletown, C. was nearly 13. She found a lump in one of her breasts. It was painful and bothering her so she showed the accused. He grabbed her breast, touched where the lump was, and said he could massage it to help it go away and for the pain.
- [46] C. wanted to tell her mother about the lump but she had to tell the accused first. C. said the accused managed their communications with their mother, who struggled with mental health issues. C. would have to speak with her mother in front of him or tell him first what she wanted to talk to her mother about.
- [47] C. said her breasts were starting to develop when she complained of the pain and the lump. The accused wanted to see where the lump was and she pulled up her shirt and her bra down and showed him. He used one hand to apply VapoRub to her breast. He started with his fingertips, then grabbed her breast with his entire hand.
- [48] The breast massages happened on more than one occasion. They were quite frequent in the bedroom that the accused and the complainants' mother shared. C. said the massages would happen maybe four times a week with the door closed and no one else present. When her mother was in hospital during one of her pregnancies, C. said it happened every day for a week. He would massage both breasts, but mostly the left one using VapoRub. The massages lasted 10 or 15 minutes.
- [49] This continued until she was 14, first in the Roundhouse apartment and then the Drake building. By the time, she was 14, her breasts were more developed.
- [50] The breast massages continued until a couple of months before she left for South America in September 2010. She did not object or resist because she had to do whatever he said, but she was uncomfortable and had been exhibiting more of an attitude towards him as she got older.
- [51] C. said the accused never took her to a doctor about the lump in her breast, but her father did when she moved to South America. The breast massages have affected her sex life and her ability to breastfeed her children. She had a difficult time breastfeeding and had to stop.

Comments About C.'s Appearance

- [52] C. confronted the accused about staring at her breasts. He commented that men were looking at her and she had to be careful. He made her change her clothes one day when she was wearing a blue tank top because he said he could see her breasts. He would let her wear shorts when she worked with him in his pool-cleaning business, but he would stare at her legs or her chest.
- [53] As C. matured, the accused would call her "beautiful" and "pretty" and told her to be careful because men were staring at her. He would take a lot of pictures of her.

Butt Smacking

- [54] C. said the accused liked to smack her buttocks from time to time, starting when she was 10. On one occasion, she was in the kitchen wearing short pyjamas. He told her she looked good in them and smacked her butt. She glared at him and he said she was "such a grinch". He would smack her butt on other occasions, for example, if she got up from sitting near him. The smacks were not punishment. He would make jokes and call her "sexy" as he did it. C. saw the accused smack M.'s butt, as well.

The Shower Incident

- [55] On September 9, 2010, there was a family party for C.'s grandmother and uncle. The next day C. was home alone and drank alcohol left over from the party. She blacked out and woke up in the shower, naked, with the accused rinsing her off with water and wiping her down from her belly to her inner thigh/pelvic area. She was very drunk and lost consciousness. She woke up on a mattress on the floor. Her grandfather was yelling at her to wake up, then he went to yell at V.H.V.R., the accused. C. was grounded for getting drunk and, shortly after that, she moved to South America to live with her father.

C.'s Discussions With Her Sisters

- [56] C. did not have much contact or communication with her sisters once she moved to South America until M. came to visit about four years later. They talked about what they went through with the accused, including the breast massages and other things. C. started the conversation because she read a magazine article about a celebrity who talked about getting breast massages from her stepfather. M. told C. about the accused having her massage his legs and giving her money not to tell anyone.
- [57] C. told A. that she was sexually abused by the accused, but not in detail.
- [58] C. learned that N. complained about the accused staring at her breasts and drunkenly throwing himself on top of her and kissing her face from a screenshot of a text conversation between M. and N. in early 2022.

- [59] A couple of months later, after the family meeting in March 2022, she learned more about N.'s complaints and told her mother to believe her daughter and take her to the hospital. N. had been cutting herself.
- [60] C. never disclosed the abuse to her mother and only ever told M. about the breast massages, but after telling her mother to believe N., C. became very depressed and had to go to therapy as she was reliving everything.
- [61] C. gave one statement to police on January 19, 2022. On cross-examination, C. said she was aware that the accused had been charged for conduct in relation to M. shortly after C. moved to South America. M. was her closest sister in age and they shared a room, but they did not remain close when C. moved away.
- [62] C. knew that M. was alleging that the accused touched her buttocks inappropriately. C. had seen this type of conduct from time to time. C. was also aware that M. alleged the accused had shown pornography to them, but C. said they did not discuss it. It was something that they went through together. The leg massages were also something that they went through together.
- [63] C. agreed that M.'s complaint against the accused in 2011 was life changing. M. went into foster care, C. went to South America, and the accused left the family home for several years.
- [64] Mr. Karp suggested to C. that she had hatched a plan with M. to get the accused away from N. based on M.'s 2011 complaints. C. denied this. She simply called her mother about N. and her own experiences with the accused, told her mother to believe her daughter and go to the police. Months later, a detective contacted C.
- [65] C. denied she was looking for revenge on the accused. She just wanted her sister, N., to be safe. N. had been cutting herself daily and complaining about pain. C. said her mother was not very on "top of things" and had to be prompted to seek medical care for N.
- [66] C. denied having extreme dislike for the accused. She loved him because he was her stepfather, but disliked how controlling he was.
- [67] C. agreed that in her statement when describing the incident with the accused in her bedroom one night she was having a dream or fantasy before she woke up which was so intense she might have had an orgasm. She insisted she woke up and he was there and his hand slipped down her thigh. She believed it had been on her vagina or clitoris, but she woke up confused because of the sensation she was having. C. denied this was an innocuous event involving the accused checking on her which she was adding a sexual component to.

- [68] C. denied she asked the accused to examine or massage her breasts. She said her breast hurt and she expected to be taken to a doctor. She would complain about a pain and he would suggest a massage. C. agreed he rubbed her breasts gently with VapoRub, but the substance burned. She went along with the massages because they were supposed to make the lump go away.
- [69] C. said her mother was not present when the massages occurred, but was aware of them. She could not recall if any of her sisters were present. The only time the accused touched her breasts was in the context of the massages. C. denied that there were only three or four massages in total which were only to her upper breast or chest area and not the nipples.
- [70] C. was 19 when M. visited her in South America. They started talking about life with the accused. M. talked about the accused paying her for a massage and C. told M. about breast massages. M. did not mention breast massages to C.
- [71] C. agreed she was blackout drunk at the time of the shower incident and her memory of the event was hazy. She did not think it was appropriate for the accused to have removed her clothing while she was unconscious to clean her off. She talked to M. about it years later, but did not suggest to M. it had been a sexual assault.
- [72] C. denied she had ill will towards the accused when she left Canada. She said it was a good and bad relationship. He was mean and controlling and C. was happy at one point when her mother separated from him, although he would still come visit. C. denied she made things up in her 2022 statement so N. and her mother could be free of the accused. She just wanted N. to be believed that her father made her uncomfortable.
- [73] C. believed the accused poked her in the back with his erection while they were lying on the couch. She denied it had been a dream. There was no rubbing or words spoken, but she felt it was a sexual encounter.
- [74] C. agreed that, when asked to describe to police all of the accused's inappropriate behaviour in her 2022 statement, she did not mention the butt smacking. She denied talking about it with her sisters before the Crown interview about a week before trial which is when defence first received disclosure of that allegation. C. said the more she talks about what happened, the more she remembers.
- [75] C. used the word "spank" or "smack" to describe the accused's action. She felt it was sexual as at times the accused would tell her she was "sexy". She told her mother it made her uncomfortable and she told her grandfather, as well.
- [76] C. was aware of the family meeting in March 2022 shortly after N. went to the hospital for her cut wrists. C. understood from M. that the meeting was to get their mother to support N. C. agreed that her sisters described specific sexual acts at the meeting, but she was not given the audio clip of part of the meeting to tailor her evidence to match them. She did not hear mention of butt smacking on the audio she received or of the accused tucking in M. or staring at her breasts. C. denied discussing things at length with her sisters before coming to

court.

A.

- [77] A. described an incident that occurred when she was 12. The family lived near Rogers Arena. She got home from school and told her mother, who was at home with N., that her back was sore. The accused said he had a cream to help relieve the pain and offered to put it on her. He took her to the room he shared with Ms. A. and told A. to take her shirt off. A. was reluctant, but the accused told her not to be ridiculous. She was not yet wearing a bra.
- [78] A. laid her upper body on the bed. The accused massaged her lower back, then her whole back, then her chest for a few seconds. She said he cupped her breasts and she froze. He finished the massage and he told her to put her shirt back on.
- [79] A. did not tell anybody about the breast touching before the family meeting in March because she felt ashamed.
- [80] A. said the accused would slap or grab and squeeze her buttocks on a daily basis. It often occurred when he walked past her or while she was doing the dishes. It started when she was around 10 years of age and continued until she left home at 18. Sometimes she would laugh it off or nervously giggle and ask him not to do it. He would respond in Spanish that it was just a joke.
- [81] A. began to crouch down to pick up items rather than bending over to avoid giving the accused a target to grab and squeeze. She said it was never punishment. He was always in a good mood.
- [82] When she was 13 or 14, he began calling her "sexy" if she wore form-fitting clothing. She generally dressed in baggy clothing because she did not want to be sexualized by him and he told her to wear more form-fitting clothing because of "how good her body looked". He stared at her chest or looked her up and down and commented on her appearance.
- [83] A. said the accused would come into her bedroom at night. She would wake up as he was leaving, but sometimes he would be standing over her. She asked him why and he said he could hear her sleep talking. A. said the accused told her that he and his cousins would touch each other in their private areas and it was normal for them. A. became fearful and defensive and she began to lock her door at night.
- [84] A. saw the accused slap and grab C.'s butt on a daily basis. He would do the same thing to M. and N., as well.
- [85] A. gave a statement to police on January 19, 2022. Police contacted her. She had not said anything about the accused earlier because she was ashamed and embarrassed.

A.'s Discussions With Her Sisters

- [86] A. was aware before she spoke to police that the accused showered C. when she passed out and that he was touching her private parts when their grandfather walked in. A. also knew that the accused would ask C. for massages.
- [87] M. told A. that the accused had asked for a massage and had her massage close to his genitals. M. said he bribed her not to tell her mother by paying her.
- [88] N. told A. she felt uncomfortable around the accused. He stared at her chest and would lie on top of her and slap her butt. She did not like his behaviour.
- [89] A. moved out of the family home shortly after she turned 18. She felt uncomfortable and unsafe living there, constantly sexualized and trapped by her stepfather. She did not complain about him earlier because the first time her sister - I infer she meant M. - told anybody about what was going on at home, their mother was taken away suddenly and she was scared they would take her away again.

Cross-Examination

- [90] On cross-examination, A. agreed she was aware of M.'s allegations in 2011. She was eight or nine at the time and there were a lot of changes in the family. The accused was out of the family home and M. was sent away to foster care. A. agreed she blamed the accused for that and was very angry. She agreed that he was a very controlling parent in terms of who she could socialize with and what she could wear.
- [91] While A. used the word "hatred" in her statement to describe her feelings about the accused, she said she now has no feelings about him.
- [92] She denied hatching a plan with her sisters to describe innocent events as sexual ones or make things up. She agreed that she discussed things with her sisters, but the goal was to get the accused away from N.
- [93] A. agreed that M. told her, if she made an allegation about the accused, he could be removed from the home. A. agreed that M. told her specifically about the accused staring at her breasts, touching her butt, and massaging her breasts. A. said they did not want to live with the accused because he was sexually touching them.
- [94] By the time of the family meeting in March 2022, A. had already gone to police and given a statement. The purpose of the meeting was for the sisters to share their experiences with their mother. A. had not disclosed anything to her mother before the family meeting.

- [95] A. agreed she was not comfortable with the back massage, but she did not refuse it because the accused would yell at her or punish her for turning down his idea. If she complained about the butt smacking, he would deny her feelings about it. She could have protested what he was doing when he massaged her back, but she was scared of him. She did not slap his hand away and she forgot that she was wearing a bra at the time.
- [96] A. denied that she misinterpreted what was happening or that M. and C.'s account of the accused massaging their breasts influenced her interpretation of what happened during the back massage.
- [97] A. also denied that C.'s description of the accused touching her buttocks as a "grope" influenced her view of what had happened to her.
- [98] A. said she told the accused not to touch her. She agreed that Spanish or South American culture is more "touchy", but disagreed it was part of the culture to sexualize children. The accused did not hide his conduct and he would do it in front of others.
- [99] A. said the accused would call her "sexy" and tell her to wear tighter clothes. Sometimes he did this in front of her mother or her younger sisters.

N.

- [100] N. began feeling uncomfortable when her father stared directly at her chest and not her face. She recalled the first time it happened and threw out the sweater she was wearing.
- [101] N. began cutting herself in January 2022 with a breadknife. She told A. about this cutting and she told M. by text about the accused looking at her breasts. She did not want to be around her father and did not want her butt to be touched anymore.
- [102] N. gave a statement on January 24, 2022. Then in March there was the family meeting. She told her side of the story. N. testified that hearing her sisters' stories made her look back on certain situations with the accused.
- [103] N. gave two other statements to police on March 27 and in July 2022. Before trial, she corrected two things she said in her statements: first, N. said the accused did not tell her nobody would ever believe her after an incident when he laid on top of her; second, she did not tell her mother about the butt touching. N. told police those things because she did not want her father in the house anymore.
- [104] N. described the incident when the accused laid on top of her. She said it occurred just before she turned 11 in 2020. She was awake lying in bed and he laid on top of her and starting kissing her face. She had difficulty when describing the positioning of his body or where on her face he kissed her. She tried unsuccessfully to push him off and it ended when he got up and left the room. N. thought it was a joke until the family meeting.

- [105] As for butt touching, N. said the accused would either slap, squish, or brush her butt starting when she was around six until he left the family home in January 2022. The slap was with an open hand. The squish involved him grabbing her butt and using his fingertips to put pressure on her. The brush was a touch as he was walking by.
- [106] The butt touching was not for punishment and it happened often. In the moment, she did not think too much of it but now it makes her uncomfortable because it was a touch she did not consent to.

Cross-Examination

- [107] On cross-examination, N. agreed she looked up to M. and has a fairly good relationship with her. M. stayed at the family home in June 2024 when she testified in the similar fact voir dire, and N. asked her questions, but N. denied asking about what happened in court.
- [108] N. was aware of M.'s allegations back in 2011. They resulted in the accused being taken out of the home for some time. N. was aware that, if she made similar allegations, she would get away from the accused. The specific goal of going to the hospital was to get away from the accused, but N. denied that M. coached her to talk about sexual allegations.
- [109] N. agreed that in her first statement she said the accused was making her uncomfortable, staring at her, and one of her older sisters said, when that happened to her, she went to the hospital and they helped her there. N. denied that M. gave her specifics about what had happened to her at that point, just that she had gone to hospital and got help. N. talked to M. on the phone before the hospital visit.
- [110] N. agreed that she did not like her father in early 2022. She did not like how he treated her mother and wanted him away from her. That was the goal of going to the hospital.
- [111] N. agreed in her first statement she did not mention any butt touching or the accused lying on her in bed, although she talked about him staring at her breasts.
- [112] After the family meeting, N. gave a second statement and disclosed, for the first time, the accused climbing into bed and kissing her. She does not recall if that was a similar story to what M. had described at the family meeting. In her second statement, however, she said she thought her sisters had similar experiences.
- M.
- [113] M. gave evidence during the similar fact voir dire as well as at trial. I will deal with the facts underlying the accused's guilty plea to sexual assault later in these reasons. For present purposes, I will deal with M.'s evidence of matters unrelated to the 2012 plea for context and, in some cases, confirmatory evidence as relied on by the Crown and ruled admissible in the similar fact ruling.

- [114] M. said her first recollection of unwanted contact with the accused occurred in a blue house, before he married her mother. M. was trying to reach something in the kitchen and he helped her by grabbing her butt to boost her up. She felt uncomfortable. She was about eight years of age.
- [115] M. said he would sit on the couch with her and her sisters and put his legs over them and have them massage his legs. C. and A. were involved in this.
- [116] The accused would smack M.'s butt if she did something good and tell her "good job" in Spanish. She felt uncomfortable, but it was common and nobody ever pointed out it was wrong.
- [117] M. recalls being at the accused's apartment when she was seven or eight. He had a roommate. M. asked to use the bathroom and saw some pornographic magazines there. The accused would show her pictures of half-naked women in skimpy lingerie.
- [118] M. has a very specific recollection of sitting at the kitchen counter with her sister, C. The accused showed them an alien cartoon porn video on his laptop. It did not involve sexual intercourse, but the cartoon aliens had breasts and penises.
- [119] When the family began living in The Lions apartment, M. was nine. By then, she was used to the accused touching her butt. He would smack or tap her on the butt, more or less weekly.
- [120] M. said the accused began touching her breasts at The Lions apartment. She was in the bedroom with her older sister, C. They were both getting a cold and he massaged VapoRub on their chests and breasts while they were lying on the bed. This happened more than once, including when she was not coming down with a cold. It was apparently to prevent catching a cold. C. was not always present when the accused rubbed M.'s breasts with VapoRub.
- [121] M. also has a memory of the accused touching her breasts, checking for lumps, when she was about nine or 10. He would feel both breasts and this happened a couple of times.
- [122] When M. began to develop breasts, the accused started complimenting her, telling her she was becoming a woman.
- [123] One night, C. and M. were in their parents' bedroom. They came home and the accused pinned her down on the bed and forced her to kiss him on the lips. She resisted and he got mad.
- [124] The family moved to a house on Barclay Street. The VapoRub incidents did not stop and the butt touching increased in frequency. Sometimes, the accused would tell M. "good job" when he touched her butt and sometimes he would say nothing.

- [125] The family moved to Yaletown and M. became involved in playing volleyball. When she was in grade seven, she played at UBC for their underage team. M. wore spandex shorts for volleyball and the butt smacking became more of a thing. The contact changed, it became more of a squeeze, and he would comment, "[y]ou're looking good", or, "[y]ou're becoming a nice young woman", or, "[y]ou're looking firm" in relation to her buttocks. M. was between the ages of 12 and 13.
- [126] M. said the accused used to take C.'s clothing away and hide it in his car. When he took the children to clean pools with him, he would tell C. to put on the clothes he has confiscated.
- [127] The family moved again to another building in Yaletown. C. moved away and M.'s relationship with the accused deteriorated. He began asking her inappropriate questions about whether she knew what an orgasm was, whether she touched herself, and that she should try touching herself in the shower. They would have these kinds of talks at home or in his car when no one else was present.
- [128] At the same residence, the accused came into her room at night when M. was already in bed. She pretended to be asleep facing the wall. He laid on top of her and tried to kiss her. He said one day someone would tell her they loved her, "but that was not love like he was doing". She could smell alcohol on him.
- [129] The butt grabbing and smacking continued and M. told her mom to tell him to stop. M. asked him to stop, but he told her to stop being dramatic, he was just playing around, and he did not stop. It happened in front of her mother and she adopted the same attitude, it was just playing around and M. should stop being dramatic.
- [130] M. observed the accused smack C.'s butt and A.'s butt, as well. C. looked uncomfortable and A. would giggle. M. said it happened to C. all the time.
- [131] M. said the accused would comment on A.'s appearance if she wore a skirt or dress, telling her she looked "sexy". She did not observe any similar interactions between the accused and N.
- [132] M. said the accused showed her a cartoon pornographic video of a little blue blob with two penises in a cartoon having human sex. They were driving over the Lions Gate Bridge at the time and she was 13. M. found the video online in 2024.
- [133] M. went with the accused to an apartment that he rented out to students. He laid his legs over her and had her massage them. He requested she move her hands higher until she got right next to his private area. He said she was not doing it properly and got down on his knees. He massaged her legs all the way up to her thighs to her crotch. She got nervous and her eyes filled with tears. He left the apartment and when he came back, he said, "Let's not tell your mother", and he gave her money.
- [134] M. also testified the accused would have C. and A. and sometimes herself massage his legs.

- [135] M. recalled the incident C. described when C. became intoxicated just before she left Canada. M. said C.'s hair was wet and she was lying in a fetal position. Their grandfather was arguing with their mother and the accused.
- [136] M. had a physical altercation with her mother in 2011. She was left with bruises and police became involved. In April 2011, she told police about what had happened with her mother. They asked about the accused and she told police what he had been doing to her. M.'s mother was charged, as was the accused, and M. was placed in foster care.
- [137] M. next spoke to police in January 2022 about the family involving her sister, N.
- [138] M. acknowledged she recorded the family meeting in March 2022 for C. M. had not spoken directly to C. about things involving the accused, although they lived close to each other and worked together in South America. They were embarrassed about what had happened. M. was aware of what had happened to C. from actually being there and seeing it.
- [139] The family meeting was intended to make their mother realize the accused was not a good person for her or her children. M. cannot recall exactly what she said to her mother at the meeting, but did tell her about the incident when the accused laid on top of her.

Cross-Examination

- [140] In cross-examination, M. agreed that the accused placed strict rules on them. She resented him for forbidding her from seeing a boyfriend and generally limiting her social life. She denied she made up the 2011 allegations to get away from him.
- [141] The family meeting was A.'s idea. The sisters planned to do an intervention with their mother about the accused cheating on her. M. told her mother about persistent ongoing behaviour by the accused, some of which her mother had seen. M. said her mother witnessed the butt touching and some of the chest rubbing incidents, as well.
- [142] M. had a strained relationship with her mother after 2011. She said the only way she could repair things with her mother and re-engage with her younger siblings was by going through the accused. She met him in 2019 at a restaurant and apologized for getting him into trouble with police. She denied that she apologized for lying to police.
- [143] M. met with the accused on a second occasion in June 2023. Her mother and younger siblings were being evicted, but the accused was living in an apartment in Coal Harbour. She recorded this meeting. Her purpose appears to have been to persuade the accused to provide housing for her mother and younger siblings.
- [144] M. gave the recording to police. She was asked about it in her June 2023 statement.

- [145] M. described the family situation with the accused as a slow game of chess with the accused about to checkmate them so they would have to checkmate him. M. said she used a chess game as an example. She denied persuading her sisters to make up allegations against him as part of the game. She denied recording the meeting to obtain incriminating evidence to support her sisters.
- [146] M. cannot recall how many incidents with the VapoRub had occurred, although it was more than a dozen. It lasted between when she was about eight until she was 10 or 11. She started wearing a bra when she was 10 and her breasts had begun developing. Some of the incidents occurred in front of her mother and the accused did not say anything sexual or touch himself during these massages.
- [147] M. recalled two specific incidents when the accused touched her breasts for lumps. C. was in the room, but she does not recall if their mother was there, as well. C. apparently thought she had lumps in her breasts and he decided to check for lumps on both of them.

The Defence Witnesses

Mr. A.

- [148] Mr. A. is the accused's son. He is 28 years of age born and raised in Mexico. The accused moved to Canada when Mr. A. was six, in 2002. Mr. A. moved to Canada when he was 19 and he owns a construction company.
- [149] Mr. A. spent six weeks in the summer of 2008 in Canada with the accused, Ms. A., when she was not hospitalized, and C., M., and A. The family was living in a house on Barclay Street and he shared a room with C., M., and A.
- [150] Mr. A. observed that his father was strict with M. and C. concerning curfew hours and chores, and they did not seem to like it. Nevertheless, he appeared to develop a good relationship with his stepsisters and still makes efforts to communicate with them, as well as his younger half-siblings, despite the difficulties posed by the accused's current legal difficulties in this matter.
- [151] Mr. A. spent virtually all of his time that summer with his father including going to work with him cleaning pools. Mr. A. observed his father touch his stepsisters by hugging them or kissing them on the cheeks, just "regular stuff". He has one specific memory of the accused swatting C. on the butt with an open hand when C. made fun of Mr. A. He recalled his father doing the same thing to M. in the context of, "Hurry up, we're going to be late".
- [152] Mr. A. did not think anything of the swat. He said it was common in his culture for fathers or mothers to jokingly spank their kids. He would consider a butt grab to be sexual, but he never saw that happen.
- [153] Mr. A. said Ms. A. came out of hospital for a few days, but for the most part she was not in the home. His father was taking care of his stepsisters.

- [154] Mr. A. came to live in Canada in 2016 and he lived for a time with the accused, Ms. A., A., and N., and two younger children. A third child was born shortly thereafter. N. was around seven. A. was around 14 or 15. Mr. A. said he had a bedroom on the first floor next to A.'s bedroom and the other children were upstairs across from his father and Ms. A.
- [155] Mr. A. thought A. and N. had a good relationship with his father, although A. kept mostly to herself. He saw his father hugging A. and N. and the younger children from time to time. He saw his father tap A. on the butt once or twice when they were all in the kitchen, but it did not seem strange or unusual to him.
- [156] Mr. A. said family massages were a common experience. He saw his father massage N.'s neck or back. His father would massage his back or shoulders. He does not recall seeing his stepsisters give leg massages to the accused.
- [157] Mr. A. said the accused talked to him about masturbation and pornography and sexual issues when he was around 14. The accused was aware that Mr. A.'s grandmother had given him a book in Spanish about a variety of subjects, including shaving and masturbation.
- [158] On cross-examination, Mr. A. said he was not given a statement or consulted any written materials concerning what he testified about. He learned some details about the charges about two weeks before he testified. He was aware of the situation, but said he was trying to keep his distance because he did not want to take sides.

Ms. A.

- [159] In addition to the general details about the family background referenced early in these reasons, Ms. A. described an incident in 2011 with her daughter, M.
- [160] Ms. A. said M. accused the housekeeper of stealing her iPad. Then the accused found it under her bed. Ms. A. confronted M., who became verbally aggressive. She slapped M. and M. fell to the floor and covered her face. M. was removed from the home and placed in foster care. Ms. A. was charged with assault and received a conditional discharge. There was a no-contact order in place for two years.
- [161] Ms. A. had several mental health diagnoses for which she has been hospitalized and prescribed medication. She was hospitalized in 2008, 2009, and 2010, and then overnight once in May 2024. She said her mental health is currently not good due to the stress of the charges against the accused.
- [162] Ms. A. said, after 2008, she no longer worked outside the home and the accused was rarely home without her present. After she gave birth to N., Ms. A. would go to the postpartum depression groups once a week in the mornings. The family went to church together and she did not go out with friends on her own.

- [163] Ms. A. said she did not see the accused touch C.'s buttocks or breasts or see him massage her while they were living at the Barclay house. She reiterated the same evidence in relation to M. and A.
- [164] Ms. A. said she usually put the kids to bed, but when she was tired during pregnancy, the accused would do it for her. They read bedtime stories to A. when she was young and learning to read. She was not aware of her husband leaving their shared bedroom in the middle of the night.
- [165] After Barclay, they moved to an apartment in Yaletown. Ms. A. was by then pregnant with another child between 2009 and 2010. She did not see the accused touch C., M., A., or N. on the buttocks or massage their breasts.
- [166] Ms. A. said the accused's relationship with C. deteriorated because she was 12 or 13 and wanted to go out all the time. Ms. A. was in and out of hospital with complications related to her pregnancies. Her parents would look after the children in the morning and at night while she was hospitalized. She had no concerns about leaving the children with the accused.
- [167] In 2010, the family moved to another apartment in Yaletown. C. complained about breast pain and small lumps. The accused gave her a massage, then Ms. A. took her to the doctor. The accused massaged C. three times in a week before the doctor's appointment. C. would come into the bedroom shared by the accused and Ms. A., complaining of pain. The accused would get the VapoRub and get C. to pull up her shirt while Ms. A. was on the bed with the baby. She did not see him massage the nipple area and did not hear him make any comments about C.'s appearance during the massages.
- [168] Ms. A. saw the accused slap C. in the buttocks in passing a couple of times. She did not see him close his hand. Ms. A. saw the same thing happen with M. She did not find it unusual because it was cultural for them to slap each others' buttocks. He did that to her and she does that to her children. She did not, however, see him slap the buttocks of A. or N.
- [169] Ms. A. did not hear the accused talk to the girls about masturbation or see him show them pornography. They kept pornographic DVDs in their bedroom for their own viewing.
- [170] Ms. A. was not concerned about the accused entering a guilty plea to sexual assault of M. She did not perceive the breast massages of C. as sexual in any way. When C. told her about her perception of the breast massages about four years ago, Ms. A. asked her why C. had not said anything earlier.
- [171] Ms. A. said she heard the accused tell her daughters they were beautiful, but not in a sexual way. She did not find his comments inappropriate even in light of what M. had complained about which led to the accused's guilty plea to sexual assault of M.

- [172] Ms. A. knew nothing of A. and N.'s complaints until the family meeting in March 2022. She was upset and shocked that they had not told her before. N. had not disclosed anything at the time of the hospital visit in January. She just said she was not feeling well and wanted to talk to a doctor. Ms. A. was aware N. was cutting herself, but N. said it was just stress, but she said nothing about the accused.
- [173] M. stayed with Ms. A. when she testified on the similar fact voir dire in 2024. The two argued and M. asked her mother why she did not leave the accused. Ms. A. said they have four children together and will always have a relationship as a result. Ms. A. and M. have not spoken since M. returned to South America in July 2024.
- [174] Ms. A. said M. wanted to apologize to the accused in 2019 for saying things that were not true.
- [175] While Ms. A. does not live with the accused, she trusts him and still loves him. If she had seen him sexually assaulting her children, she said she would have stopped it "immediately".
- [176] Ms. A. said that when C. stayed with her while she was required for trial. C. said she was nervous and someone gave her a "vape" and she felt a bit high afterwards. Ms. A. said it was a marihuana vape. Defence counsel had asked C. if she was "on anything" when she testified and C. denied it.
- [177] Ms. A. said M. and A. have had mental health issues. C. has not. Ms. A. took N. to a psychiatrist, who said N. was too young for a definitive diagnosis.
- [178] On cross-examination, Ms. A. acknowledged that C. left home when she was 14, as did M. A. left shortly after her 18th birthday.
- [179] She agreed that the accused sometimes did not like how C. dressed and he would take some of her clothing away.
- [180] Ms. A. acknowledged that she was found guilty of assault with a weapon on M. She used a belt to hit her daughter, leaving bruises. Before the family meeting in 2022, Ms. A did not know what M.'s allegations against the accused were. Her source of information for what happened between her husband and M. was her husband.
- [181] Ms. A. confirmed that the accused had a pool-cleaning business and would take some of the kids to help him. He would travel to North Vancouver for his pool business. He also rented apartments and sublet them to multiple people. He had time alone with C., A., and N., as well as M. and the other children. She saw him slap M.'s buttocks and it was not for punishment.
- [182] Ms. A. recalled spending a lot of time with Mr. A. when he was visiting in 2008. She did not think it was at the time she was in hospital when pregnant with N.
- [183] The only one of the complainants who was a sleep talker was A.

- [184] Ms. A. became aware of N.'s complaint that the accused stared at her breasts and made her uncomfortable in January 2022 at the hospital. Her brother told her to take the matter to police at the family meeting in March so she did.
- [185] Ms. A. remembered an incident before C. left Canada. That was where C. got drunk. Ms. A. had gone to her postpartum depression group and the accused was working. She left C. home alone and C. got drunk. Ms. A. recalled, when she got home, C.'s hair was wet and she was in her pyjamas.
- [186] The accused supports Ms. A. and the five children who live with her, financially. She needs his assistance. If he was incarcerated, she would find a job and provide for the family. Things would be more difficult, but not impossible.

Credibility and Reliability

The Crown Witnesses

M.

- [187] I admitted the accused's prior guilty plea to sexually assaulting M. to support proof of the actus reus on all counts and to rebut the defence of innocent association. The guilty plea is strong proof that the conduct, unwanted butt grabbing and slapping, happened and that it was a sexual assault within the scope of s. 271: R. v. Jesse, 2012 SCC 21, at paras. 36 and 52.
- [188] The facts were acknowledged by the accused's guilty plea. He was represented by counsel. There was no evidence led at this trial to rebut the facts read into the record in the Provincial Court proceedings. In the similar fact ruling, I summarized those proceedings as follows:
- [34] On March 7, 2012, the accused entered a guilty plea to one count of sexual assault of M. The transcript of submissions was in evidence on the voir dire. The Crown outlined the circumstances concerning M.'s matter coming to the attention of police. M. had gone to school showing visible injuries. M. advised the school counsellor that she had been assaulted primarily by her mother, with an allegation that her stepfather, the accused, was present.
- [35] M's mother entered guilty pleas to the assault, but in the context of investigating those allegations, M. also reported that she had been touched by her stepfather, the accused. The Crown referred to comments by the accused and discussions about sexual issues such as masturbation that "would have been over the line and were making her uncomfortable." The Crown then said:

The allegation of the sexual assaults is that there had been a variety of touches, but when I spoke to her she wasn't sure if some of these might well have been accidental. However, the touching that is the subject now of this plea is the grabbing of her buttocks. That occurred during this relevant period, and the basis of the plea, of course, is that she made it known that she was uncomfortable with this and that if not suggested that he stop it, made it known that she did not

like it. While in a kitchen area leaning over the counter he -- she says that he grabbed her buttocks again, and she has been around the house in her spandex shorts which she uses for volleyball and has had him slap her bottom, et cetera, all of which she felt was inappropriate and had told him that she did not want it to occur.

[Emphasis added.]

[36] Counsel for the accused confirmed that there was no disagreement with the facts and the matter was adjourned for a sentencing hearing.

[189] M.'s evidence of the accused massaging her breasts was also admitted to support C.'s credibility in relation to similar conduct. M.'s descriptions of the conduct are similar to C.'s, although not precisely the same. M.'s evidence concerning these incidents was unshaken on cross-examination. I found M. credible and reliable in explaining what had occurred, when and where it had occurred, what the accused's rationale for his conduct was, whether warding off cold or checking for breast lumps, and who was present. Her evidence closely parallels what C. said, although C. did not recall that M. was present for some of the breast massages.

C.

[190] C. testified about the accused touching her buttocks, massaging her breasts, touching her vaginal area on two occasions, the bunkbed incident, the shower incident, poking her in the back with his erect penis when he was spooning with her on the couch.

[191] C. was generally a careful witness. There were some details that she could not recall such as the presence of M. or their mother during some of the breast massage incidents or the fact that her mother says she took her to the doctor in response to her complaints of breast pain and lumps. I find C. was focused on what was happening to her rather than those peripheral details.

[192] M.'s evidence about breast massages, admitted as similar fact evidence, confirms what C. said about those events. Her own mother's evidence confirmed the genesis of the breast massaging in response to C. complaining about pain and a lump in her breast.

[193] M.'s evidence about the accused showing her pornography in the company of C. and the accused talking to her about masturbation, her appearance, and staring at her breasts, which C. also testified about, demonstrate that the accused created a sexualized atmosphere in his relationship with M. and C. and strengthens their evidence that the breast massages and butt smacking were for a sexual purpose.

A.

[194] A. was also a careful witness. She agreed she would try to laugh off the butt smacking and asked the accused not to do it, but he maintained it was just a joke. She developed avoidant behaviour, crouching down rather than bending over, so the accused would not have a target to grab and squeeze. She described feeling trapped and sexualized in the family

home by the accused. This is consistent with what C. and M. said about the atmosphere in the family home as demonstrated by the accused asking them about masturbation and showing them pornographic videos.

[195] A.'s rationale for not complaining earlier about what was going on, while certainly not required in law, made sense from a child's perspective. When M. told people what had been going on at home, their mother was taken away suddenly and A. was scared they would take her away again.

N.

[196] N. was a witness of few words. She had some difficulty expressing herself, which is understandable given that she only just turned 16 by the time of trial and was testifying about intensely private family matters.

[197] N. self-confessed to two lies before she came to court and wanted to address them right away when she entered the witness stand. She described the accused coming into contact with her buttocks as something she did not think much of it at the time, but it now makes her uncomfortable. N. did not consent to the touching.

[198] It is clear that N. felt uncomfortable around her father because she felt he was staring at her breasts, but it is unclear whether she was subjected to the same types of sexualized conduct and comments as her older sisters.

Collusion

[199] Mr. Karp's position is that the complainants, overtly in the case of M. and C. and perhaps innocently in the case of A. and N., colluded or coloured their evidence so that it aligned with the shared goal of implicating his client in questionable behaviour so that Ms. A. would separate from him.

[200] As I outlined in my review of the evidence, the sisters discussed some of the allegations they individually made against the accused amongst themselves or aired some of them at the family meeting in March 2022. I am not persuaded that there was a concerted effort to collude against the accused. A. was the driver of the family meeting and she did it out of concern for N.'s wellbeing. C. and M. shared that concern.

[201] C. and M. did talk to each other about some aspects of their treatment at the hands of the accused over the years. They also discussed some of what had occurred to their younger sisters. The sisters were all aware to varying degrees about M.'s allegations which led her to being taken from the family home.

[202] The discussions that occurred in this case are similar to those described by Justice Binnie in *R. v. Shearing*, 2002 SCC 58:

43 There was evidence of some communication among the complainants. With respect to the G sisters, this was almost inevitable. They had also kept in touch with JV. Other complainants were in touch with each other prior to trial. Civil proceedings had been commenced by the G sisters for compensation and to close down the Kabalarians. KWG expressed the hope that the appellant would "rot in Hell".

44 The evidence here is far more speculative than in Handy. In that case, there was consultation between the complainant and the similar fact witness prior to the alleged offence about the prospect of financial profit. Here, there is some evidence of opportunity for collusion or collaboration and motive, but nothing sufficiently persuasive to trigger the trial judge's gatekeeper function. There is no reason here to interfere with the trial judge's decision to let the collusion issue go to the jury. He instructed the jury to consider "all of the circumstances which affect the reliability of that evidence including the possibility of collusion or collaboration between the complainants". He defined collusion as the possibility that the complainants, in sharing their stories with one another, intentionally or accidentally allowed themselves to change or modify their stories in order that their testimony would seem more similar or more convincing. It was for the jury to make the ultimate determination whether the evidence was "reliable despite the opportunity for collaboration" or that "less weight or no weight should be given to evidence which may have been influenced by the sharing of information".

45 While the trial judge did not specifically link the potential of collusion to the issue of admissibility, he appears to have thought collusion (as distinguished from contact) was not a serious danger. The evidence supports his decision. He was justified in letting the collusion issue go to the jury with an appropriate warning.

[203] I acknowledge that the Crown conceded an air of reality to collusion at the voir dire stage so this case differs from Shearing in that regard, but I do not find that the complainants' sharing of some of the details that had happened to them resulted in conscious or unconscious changes or modifications to their stories to make their testimony seem more similar or convincing, with one exception: I find that N. was likely influenced by information she learned from her older sisters.

[204] Specifically, N. described an incident when the accused lay on top of her and started kissing her face. Her first disclosure of this was after the family meeting in March 2022 during which M. described the same thing happening to her.

[205] The vagueness of N.'s description of that incident coupled with the timing of the disclosure caused me to question whether N. took an innocent incident and layered on details she had learned from M.

The Defence Witnesses

- [206] As for the defence witnesses, Mr. A., the accused's son, gave his evidence in a straightforward and unbiased fashion. He recounted what he saw during his visit with his father in 2008 and years later when he moved to Canada and lived with his father, stepmother, and stepsiblings. He saw his father playfully swatting C. and M. on the butt with an open hand during his 2008 visit, but agreed a butt grab would be sexual.
- [207] As for Ms. A., she is in a difficult position. While she no longer lives with the accused, it is clear she still trusts and loves him. She said she would have stopped him if she had seen him sexually assaulting her children, but she was aware that he had entered a guilty plea to sexual assault of M. and it does not appear that his behaviour changed as a result. She only learned details from the accused about what the guilty plea involved and she did nothing when C. complained to her about the butt smacking. It may be that, at the time the guilty plea occurred, she was dealing with her own issues from being charged with assaulting M.
- [208] Another significant factor concerning Ms. A.'s ability to observe and recall is the fact that she had four children younger than M., C., A., and N. to look after while many of the events complained of were occurring. Without intending to be critical of Ms. A.'s parenting style or abilities, I find she deferred to the accused and was distracted with her younger children such that she was not entirely aware of what was going on between her husband and her four eldest daughters. I accept at least one of them complained to her mother about the accused grabbing and smacking her butt and she dismissed those concerns out of hand.
- [209] Some of Ms. A.'s evidence confirmed aspects of what the complainants testified about. For example, she agreed that the accused did not like how C. dressed and would take some of her clothes away. She confirmed he had a pool-cleaning business with clients in North Vancouver and would take some of the children to help him at work. This is consistent with M.'s account of the accused showing her pornographic cartoons as they drove over the Lions Gate Bridge which connects Vancouver to North Vancouver.
- [210] Finally, Ms. A. confirmed C.'s evidence about the accused rubbing her chest area when she complained of pain and a lump days before Ms. A. took C. to a doctor. While Ms. A. thought the rubbing did not involve C.'s nipple area, I find she was not closely supervising what was going on as she had one of her younger children on her lap at the time.
- [211] Overall, the evidence of the defence witnesses does not leave me with a reasonable doubt of the accused's guilt. The question is whether the Crown has proven beyond a reasonable doubt that the accused is guilty on the evidence as a whole.

Conclusion

- [212] I will start with C. I am satisfied beyond a reasonable doubt that the accused massaged C.'s breasts, including her nipples, and smacked her buttocks. I am satisfied beyond a reasonable doubt that those actions by the accused meet the definition of sexual assault in s. 271 of the Criminal Code.
- [213] The butt smacking occurred without C.'s consent and, in any event, she could not in law consent due to her age at the time. The conduct violated her sexual integrity. It occurred in the context of sexualized remarks by the accused to C. It is the same type of conduct that was the subject of the accused's guilty plea involving M. That guilty plea provides further proof of the actus reus of sexual assault, namely, the sexual nature of the contact. This conduct was witnessed by others in the household.
- [214] The breasts massages constitute a sexual assault. As with the butt smacking, C. could not in law consent. While there was an absence of sexualized remarks or overt evidence of sexual gratification on the accused's part, there was no reason for the accused to do what he did, particularly prior to a medical doctor examining C. to determine the nature of the lump and the cause of the pain. He violated her sexual integrity. Her mother was not in a position to provide consent as C.'s proxy.
- [215] I am not satisfied beyond a reasonable doubt that the couch incident which C. described constitutes a sexual assault. No words were exchanged, C.'s back was to the accused, and I am not satisfied that he was awake or that his actions were voluntary.
- [216] I am not satisfied beyond a reasonable doubt that the nighttime touching incident was a sexual assault. C. recalled awakening from a dream and having what she later understood to be an orgasm. The accused was beside her and covering her at the time, but I am not convinced on the requisite standard that he had been touching her vaginal area prior to her awakening.
- [217] Similarly, I am not satisfied beyond a reasonable doubt that the accused's actions in stripping down C. and showering her after she became intoxicated constituted a sexual assault. The accused's actions reflect a lack of respect for her bodily integrity as a teenage girl, but I am not satisfied the sexual contact has been made out.
- [218] I find the accused guilty of Count 1.
- [219] As for Count 2, the Crown must prove a sexual purpose. I am satisfied beyond a reasonable doubt that there was an overt sexual purpose to the butt smacking. There may well have been incidents of innocent contact by the accused, but as I set out earlier in these reasons, he sexualized the atmosphere of his dealings with C. and, by association, his physical contact with her as he smacked her buttocks.
- [220] As for the breast massage, the part of the body involved supports an inference that the massaging was done for a sexual purpose.

- [221] Given the overlap with Count 1, unless the Crown persuades me otherwise, I would enter a judicial stay of proceedings on Count 2, but I otherwise find the accused guilty of Count 2.
- [222] With respect to A., I am satisfied beyond a reasonable doubt that the accused slapped and squeezed A.'s buttocks in the context of calling her "sexy" and commenting on how she looked in form-fitting clothing. As with Counts 1 and 2, I am satisfied beyond a reasonable doubt that the accused's conduct was a sexual assault. It is the same kind of conduct that C. complained of and the same kind of conduct that was the subject matter of the accused's guilty plea in relation to sexual assault of M.
- [223] I am not satisfied beyond a reasonable doubt that the accused is guilty of sexual assault in relation to contact with A.'s breasts during the back massage. The description was vague and fleeting and it is not inconsistent with accidental contact.
- [224] I find the accused guilty of Count 3.
- [225] As for Count 4 which requires a sexual purpose, my conclusion is similar to the one I arrived at for Count 2. The sexual purpose was part of the offending conduct from time to time and the elements of the offence are satisfied beyond a reasonable doubt, but again, I would say that the conviction on sexual assault and a stay on Count 4 is appropriate in the circumstances, but a guilty verdict should be entered on Count 4.
- [226] With respect to Count 5, I make the same findings with respect to the conduct, but again, in my view, Count 3 is the umbrella or overarching count that relates to all the conduct.
- [227] Finally, in relation to Count 6 and 7 involving N., while I do not doubt her father made her feel uncomfortable, I am not satisfied beyond a reasonable doubt that any contact he had with her meets the definition of sexual assault. There was an absence of overt sexual context evidence from N. and, while her sisters saw the accused smack her butt on occasion, this lack of context evidence is significant. The similar fact evidence from the prior guilty plea does not fill in the blanks to satisfy the beyond a reasonable doubt standard.
- [228] I am not satisfied beyond a reasonable doubt that the accused pinned N. down on her bed and kissed her as she described. As I noted early in these reasons, I have concerns she may have grafted information she learned from her sister, likely M., on to a benign experience.
- [229] Accordingly, I find the accused not guilty on Counts 6 and 7.

"Duncan J."

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Prepared on 28 October 2026 · Esheria