

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Chief Judge Chisholm

REGINA

v.

G.K.

**Publication of information that could identify the complainant or a witness is prohibited pursuant to section 486.4 of the *Criminal Code*.**

Appearances:

Benjamin Eberhard  
Jennifer Cunningham

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

**Introduction**

[1] G.K. is charged that on August 8, 2018 in Carmacks, Yukon, he sexually assaulted K.B. and that while being in a position of trust or authority towards K.B., a young person, he touched her body with his lips for a sexual purpose.

[2] The Crown proceeded summarily on these charges. G.K. entered a not guilty plea on October 31, 2018.

[3] The Crown called two witnesses to testify, K.B. and Nicholle Ingalls. G.K. testified in his own defence.

**Summary of the relevant evidence**K.B.

[4] K.B. is 19 years of age and has lived in Carmacks on and off since 2015. She testified that when she was 17 years old, she was employed at the Tatchun Centre. While working there, she received a job offer from G.K. to work as the children's coordinator at the Carmacks Recreation Centre. She accepted the offer and began working there in June or July of 2018.

[5] In her position, K.B. oversaw two youth workers who looked after younger children and organized events for them. K.B. reported to G.K. and shared an office with him in the recreation centre. In the summer, she worked from 12:30 to 8:00 p.m. with a one-hour break during her shift.

[6] On August 8, 2018, upon her arrival at work, K.B. greeted G.K., the youth workers and the younger children who had arrived in the building. She went to the kitchen area of the recreation centre to make a snack for the children attending the programming. She testified that G.K. entered the kitchen and asked her about her day. I understood her evidence to be that she explained to G.K. that she had recently broken up with her boyfriend. He then questioned her about her love life and her sex life. When asked about her sex life, she testified that she didn't know what to say and just answered that it was "o.k."

[7] K.B. testified that G.K. came towards her from behind and put his hand on her stomach and started rubbing it. He kissed her neck from behind on two occasions,

before leaving the kitchen with a smile on his face. Upon his departure, she testified that she started to cry and subsequently texted two people about what had occurred. She then went outside to have a cigarette. K.B. testified that soon thereafter, G.K. joined her and told her that “he got me all hot and bothered”, but that this line of conversation changed when a mother and child on the way to the entrance of the recreation centre approached them.

[8] K.B. and G.K. returned inside the recreation centre. K.B. testified that she went into the games room/common area and G.K. entered his office. As she did not feel right with what had occurred, she went to G.K.’s office to tell him that she would like the rest of the day off. She testified that he asked her to talk with him upstairs. Once they were on the second floor, G.K. opened the door of a storage room and let her in. He followed her into the room and closed the door. The room did not have any windows. She testified that he told her that if she ever wanted to have sex to let him know. He also told her that she could not tell his wife or anybody else about it. As K.B. did not know how to respond, she replied that she would think about it. He also mentioned that his relationship with his wife was not working for him and that they were not having sexual relations often. G.K. hugged her and kissed her two more times on the neck before opening the door. She left the building soon after going back downstairs.

#### Nicholle Ingalls

[9] Ms. Ingalls is a teacher in Carmacks. In the summer of 2018, she was also in charge of the local pool. In this regard, G.K. was her supervisor. Ms. Ingalls knew K.B. through the school and the community.

[10] On August 8, 2018 she attended the recreation centre after lunch to speak to G.K. When she arrived at his office, she noted that he was talking to K.B. He asked Ms. Ingalls to wait. He unlocked the door to a nearby stairwell and sent K.B. upstairs. He asked Ms. Ingalls to watch the office while he went upstairs. Ms. Ingalls declined this request which seemed to irritate G.K. She testified that she observed G.K. go upstairs. Ms. Ingalls testified that in her very brief interaction with K.B. before K.B. went upstairs, she seemed fine. Ms. Ingalls indicated that they were upstairs for less than five minutes, and that when K.B. came back down, she appeared upset. Ms. Ingalls tried to communicate with her because she wondered what was going on, but K.B. left the building by the front door. Ms. Ingalls testified that she subsequently spoke to K.B. at the pool, after K.B. had reported this allegation to police.

[11] Ms. Ingalls testified that the only office in the building is the one G.K. occupied on the main floor.

### G.K.

[12] G.K. is 61 years of age. He began to work at the recreation centre in Carmacks in 2000 and became the recreation director in 2018. He hired K.B. as the youth program coordinator in 2018. He testified that she was very good at her job, but that she showed up late, at times. He gave K.B. two verbal warnings and one written warning about not arriving at work on time. On August 8, 2018, G.K. testified that she either called or texted him to indicate that she would be a few minutes late. He was mildly upset by this communication, although K.B. ended up attending work on time at 12:30 p.m.

[13] G.K. testified that he was also mad about a note that K.B. had written and that he had discovered in the recycling bin on August 3, 2018. The note outlined the work that G.K. had assigned to her and, in no uncertain terms, her negative feelings in this regard. He felt that the note was disrespectful. He did not initially raise the issue of the note with her, as he was going on holidays with his wife on August 16, and he did not want to risk K.B. quitting her job. However, on August 8, he called her into his office when she arrived at work. He spoke to her in a raised voice about the note, and suggested to her that if she was unhappy with her job, she could give him two weeks' notice. G.K. testified that K.B. appeared somewhat stunned as a result of the verbal reprimand. She went into the games room where the two other youth workers and some kids were.

[14] At around 1:00 p.m., G.K. testified that K.B. went into the kitchen to make snacks for the kids. He noted that she was agitated, so he went to where she was and volunteered to make the snacks for her. As there was some problem with the food, he ended up assisting her. He asked her if she was alright and she replied that she and her boyfriend were having problems. G.K. testified that K.B. stated "I want to beat him up". She then asked G.K. if he wanted to beat up her boyfriend. He replied in the negative and described doing so with a smile on his face.

[15] Once the snacks were prepared, K.B. went to the games room to be with the children and G.K. returned to his office to work. Later, K.B. arrived at his office to tell him that she was not feeling well and that she wanted to go home. He believed Nicholle Ingalls had arrived at this point to talk to him about something.

[16] G.K. asked K.B. to speak with him in private upstairs. He testified that he wanted to warn her that if she assaulted her boyfriend and was charged, she could lose her job. He explained that this had occurred to another employee who had been in trouble with the law outside of work. G.K. stated that he was trying to protect K.B., because he did not want to lose her as an employee.

[17] He does not remember her saying anything in response to his advice.

[18] As K.B. was leaving the recreation centre to return home, G.K. recalls opening the two sets of doors and telling her not to get in trouble.

[19] G.K. denies any inappropriate behaviour towards K.B.

### **Analysis**

[20] As G.K. testified at trial, the principles set out in *R. v. W. (D.)*, [1991] 1 S.C.R. 742, apply. I summarize those principles, as follows:

If I believe the evidence of the accused, I must acquit.

If I do not believe his testimony, but am left in reasonable doubt by it, I must acquit.

Even if his evidence does not raise a reasonable doubt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of his guilt.

[21] This is not a credibility contest between the Crown and defence witnesses.

[22] As stated by the Court in *R. v. Campbell*, 2018 YKSC 37, at para 4:

I must remind myself that a criminal trial is not a credibility contest. It is a trial to determine whether the Crown has proved the guilt of the accused

on the specific charge alleged beyond a reasonable doubt. Therefore, it is wrong to decide a criminal case where, as here, there is conflicting evidence simply by deciding which version of events is the preferable one. The decisive question is whether, considering the evidence as a whole, the Crown has proved the guilt of the accused beyond a reasonable doubt.

[23] When assessing the evidence of witnesses, a court must consider both credibility and reliability. The Court in *R. v. Nyznik*, 2017 ONSC 4392, at para. 15 explained the difference between the two:

Reliability has to do with the accuracy of a witness' evidence -- whether she has a good memory; whether she is able to recount the details of the event; and whether she is an accurate historian. Credibility has to do with whether the witness is telling the truth. A witness who is not telling the truth is by definition not providing reliable evidence. However, the reverse is not the case. Sometimes an honest witness will be trying her best to tell the truth and will fervently believe the truth of what she is relating, but nevertheless be mistaken in her recollection. Such witnesses will appear to be telling the truth and will be convinced they are right, but may still be proven wrong by incontrovertible extrinsic evidence. Although honest, their evidence is not reliable. Only evidence that is both reliable and credible can support a finding of guilt beyond a reasonable doubt.

[24] Finally, the burden is on the Crown to prove the charges beyond a reasonable doubt. This burden never shifts to the defence.

[25] Aside from the alleged incidents before the Court, there is much common ground between the evidence of K.B. and G.K. Both agree that:

- K.B. showed up for work on time on August 8, 2018;
- K.B. and G.K. were in the kitchen area together and they spoke of the problems she was having with her boyfriend;
- K.B. and G.K. were outside smoking at some point;

- K.B. advised G.K. that she was not feeling well and wanted to go home;
- Before she left to go home, he asked to meet with her upstairs, and they met in a room;
- Ms. Ingalls had arrived in the building prior to this impromptu meeting.

[26] There is also much agreement as to the timeline. The evidence reveals that K.B. was not at work for a lengthy period of time on August 8. K.B. and G.K. agree that her work day started at 12:30 p.m. G.K. indicated that K.B. went to the kitchen at approximately 1:00 p.m. K.B. testified that she texted two people about what allegedly happened in the kitchen at 1:11 p.m. Ms. Ingalls recalls having a meeting scheduled with G.K. after lunch. That meeting was delayed for approximately five minutes because of G.K.'s meeting with K.B. upstairs, after which time K.B. left the building. Both G.K. and K.B. believe she left work around 2:00 p.m.

[27] There is disagreement as to whether G.K. spoke to K.B. about her discarded note that he had located and read on August 3. K.B. denied that he talked to her about the note. G.K. testified that the note upset him. Ms. Ingalls attended an impromptu meeting prior to August 8, in which G.K. had voiced his displeasure about the note. G.K. testified that he did not talk to K.B. when he located the note or in the days following because he was leaving with his wife on vacation on August 16 to travel to Grande Prairie, and he did not want K.B. getting upset and quitting her job.

[28] Despite his initial plan not to speak to K.B. about the note before his vacation, he states that his annoyance on August 8 with K.B.'s text or call that she might be late,



even though this did not come to pass, led him to do an about face. He not only felt it imperative to confront her immediately with the note, he testified that he told her that if she wanted to give him two weeks' notice, he would try to find someone else for the position. He testified that he was of the view that if K.B. decided to quit, he would cancel his holidays and attempt to replace her.

[29] G.K.'s explanation regarding the timing of and the manner in which he approached K.B. on August 8 goes against his previous well thought out considerations, namely that he did not want to risk losing K.B., especially at a time that would jeopardize his vacation plans. It is of some significance, in my view, that the confrontation that G.K. describes simply concerned a note apparently written in frustration by a teenager who then tried to dispose of it. Consequently, I find it odd that G.K. would broach this subject with K.B. upon her arrival at work on August 8.

[30] G.K.'s description of what occurs next is in my view problematic. He described himself as being very busy that day. Despite this, he purports to have had time to not only notice that K.B. was agitated as she went to the kitchen to make snacks not long after he had confronted her, but also to have taken it upon himself to go to the kitchen, check on her, and volunteer to make the snacks for her. Despite her agitated state and his recent verbal reprimand to her, he purports to have drawn out of her the fact that she was having difficulties with her boyfriend. I find this evidence to be contrived and do not accept it.

[31] Regarding the upstairs meeting, I find G.K.'s evidence to be again problematic.

- This is not a situation where G.K. and K.B. were already upstairs and required some privacy;
- In fact, K.B. had come to his office to ask for the rest of the day off when he requested to meet with her in a different part of the building;
- By his own account, he had used his office earlier to deliver a verbal reprimand to K.B. when other people were nearby in the common room;
- His office had offered sufficient privacy for that meeting, even when he reprimanded K.B. with his voice raised, and
- In this situation, there was no rational or compelling reason to meet with K.B. upstairs, in what is effectively a storage room with no windows.

[32] Overall, I find G.K.'s version of events regarding both the kitchen and upstairs interactions with K.B. to be concocted and not credible. I do not believe his testimony and it does not leave me in a reasonable doubt.

[33] K.B. testified in a straightforward manner. Her answers were responsive to the questions posed, and she acknowledged when she was uncertain. She did not strike me as someone who is particularly sophisticated.

[34] At one point, she was somewhat unclear about a passage in her statement to police, but at the end of the day I understood her to have been attempting to articulate the anxiety that she was feeling in processing what had taken place with G.K. In any event, there was no suggestion that she had mixed up anything that she alleged to have occurred. I find that this in no way detracted from her credibility or reliability.

[35] In assessing the testimony of K.B., I find some confirmation from the evidence of Ms. Ingalls. Ms. Ingalls observed K.B. briefly before G.K. sent K.B. upstairs. Within approximately five minutes, she again observed K.B. as she descended the stairs and passed by her. Ms. Ingalls noted that K.B.'s demeanour had changed and that she was upset. Based on the manner in which K.B. testified and the content of her testimony, it is clear that the incidents that she alleges made her very uncomfortable.

[36] The defence contends that in a Human Rights complaint filed by K.B. with respect to what she alleges occurred, she inaccurately summarized or misrepresented a conversation between her and Ms. Ingalls a few days after the allegations arose. In the complaint, K.B. indicated that Ms. Ingalls told her about two days after the incident to keep details of the incident to herself and that Ms. Ingalls would do the same. There is an admission by counsel that K.B. first spoke to the police on August 8 about these allegations.

[37] Ms. Ingalls testified that she did not tell K.B. to keep the allegations to herself and that she would do the same. Additionally, she testified that K.B. told her that she had already spoken to her mom, step-father and the police about the allegations. Ms. Ingalls testified that she suggested to K.B. that it was probably best that she not share

the allegations with others, and instead that she let her mother and the police deal with the matter.

[38] When confronted with this portion of her Human Rights complaint at trial, K.B. testified that in their conversation, Ms. Ingalls probably meant that she did not want people in the community to gossip about the allegations.

[39] I do not find that that portion of the Human Rights complaint misrepresents the discussion between K.B. and Ms. Ingalls. In my view, in addition to Ms. Ingalls not thinking it was a good idea for K.B. to share the allegations more broadly in the community, it is implicit in Ms. Ingalls's comments to K.B. that Ms. Ingalls, herself, was not going to speak about the allegations in the community. It is also clear from K.B.'s testimony that she had not meant to suggest in the complaint that Ms. Ingalls had tried to influence her with respect to pursuing the allegations.

[40] Although the wording of that portion of the complaint could have been more clearly written, I am unable to find that there was any significant inconsistency between K.B.'s and Ms. Ingalls's recollection of that conversation.

[41] I find that the evidence of K.B. was both credible and reliable.

[42] The defence maintains that I should be suspicious of this allegation because the relationship between G.K. and K.B. over the couple of months that she worked with him was both professional and appropriate. The defence submits that there was no grooming type behaviour exhibited by G.K.

[43] It should be noted that K.B. did testify that in April of 2018 she was with a friend during a local hockey tournament. She had a headache and went inside the recreation centre to ask G.K. for an Advil. He gave her a pill and said that it would make her “horny”. She said that she laughed off the comment.

[44] Otherwise, it is true that K.B. does not allege any other inappropriate communication or contact by G.K., however, it would be inappropriate for me to determine that such a background is to be expected in cases of sexual allegations. Although it is not uncommon for a sexual assault victim to describe their assailant exhibiting predatory type behaviour, there are also situations where the assailant’s behaviour is opportunistic. In any event, it would be an error for me to fall into the trap of stereotypical thinking when considering a sexual assault allegation.

[45] The defence also argues that K.B. had a potential motive to accuse G.K. of sexual assault. This argument is premised on how August 8 unfolded for K.B. at her workplace, as well as what she stated to the police when interviewed.

[46] The defence points to the manner in which G.K. treated K.B. on August 8. As soon as she arrived at work, according to G.K., he confronted and reprimanded her verbally for the note that she had not intended anyone to see. He suggested that she could give him two weeks’ notice if she was unhappy with her work. Finally, as she was leaving work because of illness, he warned her about the consequences at work if she were to beat up her boyfriend. The defence says that this is a motive for K.B. to want to see G.K. removed as her boss. His poor treatment of her is a possible motive for her

advising police that she wanted him replaced and did not want to go back to work with him there.

[47] However, as mentioned earlier, I do not accept much of G.K.'s testimony, including that he cautioned K.B. about how her behaviour outside of work could jeopardize her job. Therefore, the argument that she had animus towards him for how he treated her does not hold water.

[48] Also, it is telling to me that when K.B. was questioned about whether she had had concerns if G.K. were charged criminally, she stated, amongst other things, that she believed that everyone was going to think that she was lying because of his status in the community. I accept her evidence that even though she felt he should be charged, she was not of the view that she would be believed.

[49] After considering all of the evidence, I find that the Crown has proved the sexual assault allegation beyond a reasonable doubt. Regarding the sexual exploitation charge, G.K. was clearly in a position of authority with respect to K.B. I find that the Crown has also proved beyond a reasonable doubt the essential elements of that offence. I find G.K. guilty of both counts.

[50] I will hear from counsel regarding the application, if any, of the rule against multiple convictions in this matter.