

SCENARIOS

REFERRALS

- You receive the following email from victim services. What's wrong (or incomplete) with the information provided? What more do you need to know?
- “Can you represent a complainant on a 276/278 application? The dates are June 3, 2024 and June 17, 2024.”

SCENARIO #1

- The complainant alleges that she was sexually assaulted years ago by her high school teacher. She tells the investigator that she wrote about the sexual assault in her diary. She takes the diary out of her purse and offers it to the officer taking her statement.
- What should the officer do?
- What should the Crown do?

SCENARIO #2

- Five years ago when the complainant was 20 years old she posted a public video on YouTube in which she discussed her addictions, her history of abuse, her mental health challenges and the various times she would have sex for drugs.
- Does she have a reasonable expectation of privacy in the YouTube video?
- If the defence wants to use the video at trial what application(s) would be required?

SCENARIO #2 CONTINUED

- Regarding whether she has a reasonable expectation of privacy in the video, does your answer change if she has wanted to delete the video since she cleaned up four years ago but cannot because she no longer has access to her YouTube account information?

SCENARIO #3

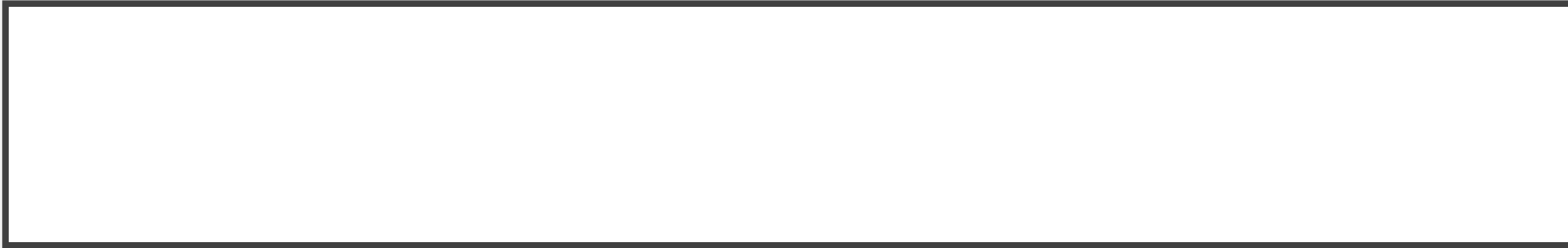
- The complainant was at work when her boss sexually assaulted her by touching her over her clothing. The complainant was shocked and didn't say anything at the time. That evening they exchanged the messages on the following slide.
- The next day the complainant reported to the police. She gave the text messages to the police and the Crown disclosed the messages to the defence.
- The defence wants to cross-examine the complainant on the texts. The Crown also wants to use the texts at the trial.

SCENARIO #3 TEXT

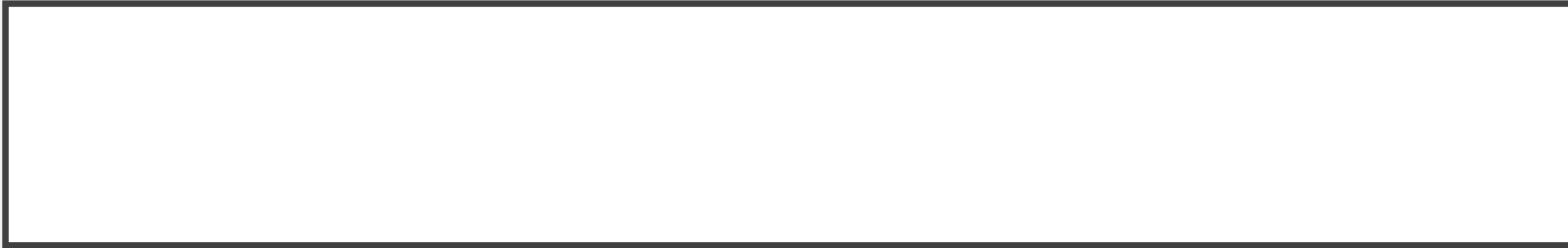
- Complainant – I can't come back to work after what happened. You shouldn't touch me like that.
- Boss – Please call me.
- Complainant – No. I'm too upset. I was sexually assaulted as a child and that's why I am so devastated.
- Boss – Please call me.
- Complainant – No I won't call and I won't come back. You shouldn't touch me like that.
- Boss – I'm so sorry.

SCENARIO #3 QUESTIONS

- Question 1 – Since the complainant gave the texts to the police does she have a reasonable expectation of privacy in the text messages?



- Question 2 – If she does not have a reasonable expectation of privacy in the messages can she be cross examined on the sexual assault that occurred when she was a child?



- Question 3 – If she does have a reasonable expectation of privacy in the text messages what should the Crown do? What should complainant's counsel do?

SCENARIO #4

- The defendant is charged with a number of sexual assaults against his ex-wife spanning the two years that they were married. The defence lawyer contacts the Crown and says that he knows she was seeing a therapist throughout the marriage. He asks the Crown to contact the complainant and obtain the contact information for the therapist so he can bring a third party records application. He tells the Crown that, since there was no preliminary hearing, the Crown has a duty to inquire.
- What should the Crown do?

SCENARIO #5

- Ten year old child alleged that the father had raped and hit her. The child was removed from the home and placed in foster care. The defence brought a s. 278.92 application arguing that the following text exchange is a recantation by the child. The text exchange occurred three years after the assaults.
- *Mom – So you want to see Daddy? I won't tell anyone.*
- *Child – Yes I want to see him!*
- *Mom – Daddy never did anything, right?*
- *Child – Daddy hit me. That's all.*

SCENARIO #5 CONTINUED

- During a meeting with the complainant her lawyer asks her client to show her the **next** text messages she exchanged with her mom. The child shows her the following:
 - *Mom – But nothing sexual right? He just hit you?*
 - *Child – It hurt the first time when he took my virginity.*
- What steps should the the complainant’s lawyer take?