

Circumstances of Aggravation in Sexual Offences

“Under his or her care”:¹

The prosecution must prove that the defendant had the child under his care at the time of the alleged indecent dealing, that is, he was looking after the child at the time. The prosecution does not have to prove that he was the only person looking after the child at the relevant time.

OR: A person has a child in care if he/she is responsible for keeping the child safe and healthy in the circumstances. It is not necessary for the prosecution to establish that the defendant was the only person who had the child under his/her care at the time.

“Under the age of 12”:

This is not disputed.

OR: The uncontested evidence from the child’s mother [or from the birth certificate – exhibit --] is that the child was born on [date] so at all material times he/she would have been under 12.

“Lineal Descendant”:

The prosecution has to prove that the child was a direct descendent from the defendant [e.g. A granddaughter is a lineal descendant of her grandfather.]

“Under Guardianship”:

The prosecution must prove that the defendant had the right or duty of protecting the complainant in the sense that he was required to protect her property or rights in circumstances in which the complainant was not capable of managing her affairs because of her age or other disability.

“A Person with an Impairment of the Mind”:

The prosecution must prove that the complainant was a person with an impairment of the mind. (See the definition in Section 1, *Criminal Code*.)

¹ In *R v FAK* [2016] QCA 306 the Court of Appeal discussed aspects of what is involved in having a child under care: at [64]-[87]; [129]-[138]; [144]-[149]. The expression “under care” means having responsibility for the control and supervision of the child.

“Serious Organised Crime”:

Some sexual offences are prescribed offences under s 161Q of the *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.