

**IN THE YOUTH JUSTICE COURT OF NOVA SCOTIA**

Cite as: R. v. “Y”, 2015 NSPC 66

**Date:** October 9, 2015

**Docket:** 2675200

2675201

2675202

**Registry:** Halifax

BETWEEN:

HER MAJESTY THE QUEEN

v.

“Y”

**DECISION ON SENTENCE**

BEFORE THE HONOURABLE JUDGE ANNE S. DERRICK

HEARD: October 6, 2015

DECISION: October 9, 2015

CHARGES: sections 346 (1.1); 163.1(4); 163.1(3)(a), *Criminal Code*

COUNSEL: Jamie Van Wart and Mark Heerema, for the Crown

Peter Planetta, for “Y”

## **By the Court:**

### *Introduction*

[1] On April 2, 2015 I convicted “Y” of three offences –extortion, possession of child pornography and possession of child pornography for the purpose of distribution. (*R. v. “Y”, [2015] N.S.J. No. 137*)

[2] “Y”’s offences exploited the murky opportunities afforded by internet anonymity. They were oxygenated by “Y”’s own vulnerability as a socially isolated, highly anxious teenager. His actions amplified the fragility of the victim, “A”, and when she testified at trial it was obvious that she continues to be in a very delicate psychological condition.

[3] The images that qualified as child pornography under the *Criminal Code* were “selfies” taken by “A”, a 16 year old girl, depicting her breasts - a “bra-on” image and a “no-bra” image. (*R. v. “Y”, paragraphs 4 and 6*) “Y” extorted the images from “A” and was a party to the possession of them for the purpose of distribution. The distribution of the “selfie” images occurred when they were posted to “A”’s Facebook page and the Facebook accounts of two of her friends.

[4] As my trial decision explains, “Y” committed his offences in association with an on-line friend he knew as “Z”. “Z” has never been identified. “Y” testified that his loneliness and isolation led him to develop a dependence on “Z” and to collaborate with him in tormenting the victim and extracting the ““selfies”” from her.

[5] All this happened when “Y” was 16. He is now 19.

### *The Crown and Defence Positions on Sentence*

[6] The Crown and Defence agree that “Y”’s sentence should be non-custodial. The Crown is seeking a 24 month probation order with specific conditions. The Defence agrees that 24 months is an appropriate duration of community supervision for “Y” but submits he should receive a conditional discharge. There is significant, although not complete agreement on the conditions to which “Y” should be subject. A contested issue is whether the child pornography conviction is

a conviction for a “violent offence” as defined by section 2 (c) of the *Youth Criminal Justice Act* (“YCJA”).

[7] In relation to the ancillary orders being sought by the Crown, the Defence does not oppose the DNA order being sought nor the order pursuant to section 164.2 of the *Criminal Code* seeking forfeiture of the computer seized from “Y”’s residence by police (and exhibited at trial as Exhibit 8.) A weapons prohibition order under section 109 of the *Criminal Code* and section 51 of the YCJA can only be imposed if I find that “Y” has committed a “violent offence” within the meaning of section 2 (c) of the YCJA.

### *The Issues*

[8] “Y”’s sentencing requires me to decide these following issues:

- (1) “Y” been convicted of a “violent offence” within the meaning of section 2 (c) of the YCJA?
- (2) Which of a two year probation order or an order for a conditional discharge with a duration of two years best satisfies the purpose and principles of sentencing under the YCJA?
- (3) What conditions should be imposed on “Y” in either a probation order or an order for a conditional discharge?

[9] It should be noted that Crown and Defence have essentially jointly recommended that “Y” not receive a custodial sentence and should be supervised in the community for two years. This is the Crown’s position notwithstanding the submission that I should find that “Y” has been convicted of a “violent offence.” I am satisfied there is no justification for considering a custodial sentence for “Y”: I find nothing to indicate that “Y” cannot be held accountable as required by the *Youth Criminal Justice Act* (“YCJA”) and rehabilitated by a non-custodial sentence.

### *Sentencing Proceedings*

[10] “Y”’s sentencing hearing was to have occurred on September 17. A psychological assessment ordered pursuant to section 34 of the *Youth Criminal Justice Act* (“YCJA”) was ordered on April 16. It arrived on September 14. A

psychiatric report was filed with the Court on September 16. The sentencing hearing had to be adjourned to permit Mr. Planetta an opportunity to review these reports with “Y”.

[11] When the sentencing hearing proceeded on October 6, I had the following before me: a pre-sentence report; a 68 page section 34 psychological assessment; a short psychiatric assessment; and six cases provided by the Crown.

[12] These proceedings have been underway for a considerable length of time. “Y” was arrested and charged almost two years ago. Until two and a half days ago I did not know the Defence position on sentence. Addressing the imperatives of accountability and rehabilitation has to be the priority. Consequently I am foregoing a detailed description of the contents of the various reports in favour of an overview of each one.

#### *The Pre-sentence Report*

[13] “Y” lives at home with his parents and his two siblings. He experienced a happy childhood but has struggled with severe anxiety and related mental health issues throughout his teens.

[14] “Y”’s mental health issues were first identified in Grade 6. In Grade 8 he was diagnosed with Social Anxiety. It became increasingly difficult for him to be at school or in social settings. As the section 34 assessment also indicates, he has received significant mental health interventions; unfortunately “Y” has been unable or unwilling to derive much benefit from them.

[15] “Y” continues to be isolated at his parents’ home. He lives with significant mental health issues although he advised the author of the pre-sentence report that he has been feeling better. His severe social anxiety has had a devastating effect on his ability to connect socially, learn and experience the wider world. He is described as “very shy” and reports having only a handful of close friends whom he has known since childhood.

[16] These criminal proceedings have had a severe effect on “Y”. He experienced increased depression and lost weight and had to be hospitalized after his arrest.

[17] This is “Y”’s first experience with the criminal justice system. He has no criminal record. The pre-sentence report notes that “Y” expresses considerable remorse which is also referenced in the section 34 assessment. “Y” told the author of the pre-sentence report that he committed the offences during a time when he was not attending school and suffering from low self-esteem. He described feeling at times as though what he was doing on-line with “Z” was not real. “It was like I was in a dream and I could see myself doing it.” He explained that, at the time, he did not think about the consequences of his actions or the victim. In talking to the author of the pre-sentence report, “Y” framed his feelings about his actions in these terms:

I am disgusted by my actions, so much so it keeps me up at night. It was horrible. I thought she was lying about her mental health and was using it as a way to seek attention, but in fact we pushed her to do these things. I want fair punishment what ever the Judge sees fit. I want to feel as though I somewhat paid for what I did.

#### *The Psychiatric Report*

[18] The psychiatric report was ordered pursuant to section 34 of the *YCJA*. It reports a diagnosis for “Y” of severe anxiety disorder which is “mainly social in type” although it “also bears other traits related to generalized anxiety and perhaps other anxiety disorders.” Also noted is “the presence of an adjustment disorder with depressive symptoms” which “has complicated the anxiety disorder...”

#### *The section 34 Psychological Assessment*

[19] The psychological assessment involved interviews, review of documentation, including my trial decision, the administration of psychological tests to “Y”, risk assessment, and case conferencing. The testing and interviews with “Y” occurred over seven separate days and totaled 23 hours. The assessors found “Y” made a good effort during the psychological testing, appearing focused and dedicated to completing the requirements, and interested in his performance.

[20] The psychological assessment examined a broad range of categories potentially relevant to “Y”’s psychological profile. These categories included:

“Y”’s family history, his education, sexual history and sexual relationships, peer relationships, his leisure and recreation activities, employment, alcohol and substance abuse, mental health, and “Y”’s strengths and goals.

[21] “Y” is described by his parents as “quiet, introverted, respectful, anxious and soft-hearted...” They view him as “kind, trustworthy, and honest” and “a good listener, great cook and loyal friend.” But the dominant force in “Y”’s life has been his severe anxiety which has had a crippling effect. Severe anxiety has robbed him of normal socializing, schooling, peer relationships and activities enjoyed by typical children. “Y” left school in Grade 9 and has never worked or volunteered. His parents told the assessors that “Y” spends most of his time in his bedroom emerging only to use the washroom and shower and make meals which he takes back to his room to eat. He has been significantly functionally impaired by his profound anxiety.

[22] “Y” is no stranger to mental health interventions. The mental health interventions detailed in the psychological assessment have included: IWK Health Centre – Psychiatric Services; IWK Health Centre – Psychological Services; IWK Health Centre – Youth Care Worker; IWK Health Centre – Youth Court Mental Health Liaison; and IWK Health Centre – Halifax Community Mental Health Clinic. “Y” was also hospitalized for approximately 3 weeks in late 2013.

[23] “Y”’s parents first sought out mental health services for him in October 2010 when he was 14 and his involvement with the IWK Health Centre continued, on and off, until October 2014. It is an involvement that has been characterized by avoidant behaviour and lack of engagement. “Y” also stopped taking prescribed anti-anxiety medication in 2012 because he didn’t like the way it made him feel. In November 2013, Dr. Bagnell, a psychiatrist with the IWK, reported that “Y” was feeling “guilt and embarrassment” about his offences and “a lot of anxiety about his future legal proceedings.” She described “Y” in terms that reflect the severity of his mental health issues: “an extremely vulnerable youth” having “low self-esteem, no engagement with anything of meaning outside his family and [having] missed major education and social-economic developmental stages over the past several years of his life.” She noted however that he “had some insight into his patterns of avoidance and indicated his desire to get help.” This recognition of the

need for therapeutic intervention had existed prior to being charged as “Y” had asked his father to help him reconnect with mental health services.

[24] “Y”’s reaction to being criminally charged, a reaction that included suicidal ideation, led to his admission to hospital where he remained from November 15, 2013 to December 6, 2013. But once again, a few months after his discharge from hospital, he fell into old patterns of avoidance which led to him missing appointments with Dr. Bagnell.

[25] Other earlier mental health interventions documented by the section 34 assessment were also frustrated by “Y”’s lack of motivation and commitment. For example, exposure therapy was initiated both in 2011 and 2014 and although there was a positive improvement noted at first, little progress was achieved because “Y” did not practice between sessions as had been recommended and his family failed to hold him accountable for not following through.

[26] The psychological assessment notes that according to “Y”’s father, a number of factors have contributed to “Y”’s inconsistent patterns of engagement with mental health interventions. Mr. F identified “Y”’s severe anxiety and extenuating circumstances at home such as financial constraints, lack of transportation, and his own physical and mental health difficulties.

[27] Mr. F is also noted to have told the assessors that he believes “Y” has, as a result of becoming involved with the criminal justice system, acquired insight into the seriousness of his anxiety and the negative effects it has had on his life. Mr. F believes that “Y” is “ready, and willing to participate in any treatment program and/or mental health counselling as ordered by the court.” This was also indicated by Mr. Planetta at the sentencing hearing.

[28] The psychological assessment reports Mr. F describing “Y” as “incredibly embarrassed and ashamed of his behaviour” and having learned “a valuable lesson.” He does not believe “Y” will have any future involvement with the criminal justice system.

[29] “Y” indicated in the psychological assessment that his mood was improving with time but that he “continues to experience periods of disappointment and melancholy when he thinks about his involvement” in his offences.

[30] Psychological testing appears to confirm the clinical observations made of “Y”. For example, testing results produced a personality “profile configuration” that “suggests prominent struggles with both anxiety and depression. Individuals with profiles similar to “Y”’s tend to...endorse feelings of hopelessness, unworthiness, and low self-esteem. They are plagued by guilt, self-doubt, are insecure and tend to have a pessimistic outlook on life.” Other features of this personality profile include: passivity, fearful dependency, social anxiety, vulnerability to exploitation, reclusiveness and a tendency to be interpersonally avoidant.

[31] The diagnostic impressions documented in the psychological assessment include: (1) Social Anxiety Disorder; (2) Unspecified Depressive Disorder; and (3) Dependent and Avoidant Personality Traits. Also referenced is “Y”’s involvement in the criminal justice system and his low income socio-economic status. The psychological assessment indicated that “Y” does not exhibit the personality features typically associated with psychopathy, noting: ““Y” lacks any of the features comprising a prominent antisocial, irresponsible, and impulsive lifestyle orientation.”

[32] The section 34 assessment reports that “Y” accepts responsibility for his offending “as a whole” but deflects some of the blame by describing his culpability as guilt “by association.” That does not accord with my findings of fact and the application of the law to those facts. It may reflect what was picked up in the psychological testing, that “Y”’s responses on certain tests suggest an attempt to present himself in a more positive light. The psychological assessment observes that: “...”Y” not only wishes to portray himself in an overly favourable manner, he lacks insight into less socially favourable aspects of himself.”

[33] That said, there is acceptance of “Y”’s remorse as genuine, including by the Crown. The psychological assessment indicates that “Y” reported feeling empathy for the victim. “To his credit, he was able to appropriately articulate the potential negative impact [of his offending] on the victim.” “Y” identified these harms as: the likelihood the victim felt violated and humiliated by having the “selfies” posted, the potential that she was fearful of further circulation of the images online, probable depression and anxiety about the impact on her reputation, and an erosion of her ability to trust people.



[34] The psychological assessment describes important “treatment targets” for “Y” as including “the development of real life social, dating and anxiety management skills” to allow “Y” “to become more confident and proficient in making meaningful social connections, thereby reducing his social isolation. This, in turn, will render him less vulnerable to forming excessively dependent attachments.” Although “Y” must squarely accept his active role in the offences he stands convicted of, his reliance on “Z” as the only constant in his lonely, isolated life was a significant factor in his offending. As the psychological assessment concluded, “...based on “Y”’s account and available collateral information...”Y”’s self-serving needs (i.e. to maintain his connection to “Z”) trumped his empathy for the victim.”

*The Purpose and Principles of Youth Sentencing*

[35] The *YCJA* has embedded accountability as the fundamental principle of sentencing. In the words of the Ontario Court of Appeal in *R. v. A.O.*, [2007] O.J. No. 800, paragraph 59, accountability "drives the entire *YCJA* sentencing regime." The *YCJA* sentencing regime is designed by Parliament to

... promote the long-term protection of the public by addressing the circumstances underlying the offending behaviour, by rehabilitating and reintegrating young persons into society and by holding young persons accountable through the imposition of meaningful sanctions related to the harm done. (*R. v. B.W.P.*, [2006] S.C.J. No. 27; *R. v. B.V.N.*, [2006] S.C.J. No. 27, paragraph 4)

[36] The consensus is that accountability is to be regarded as having equivalency to "the adult sentencing principle of retribution" discussed by the Supreme Court of Canada:

Retribution in a criminal context ... represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused

by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more. (*R. v. M.(C.A.)*, [1996] *S.C.J. No. 28, paragraph 80; emphasis in the original*)

[37] Proportionality is a central feature of a retributive sentence: the sentence must "properly reflect the moral blameworthiness of that particular offender." This accords with the individualized nature of sentencing.

[38] The youth criminal justice system is based on the principle of diminished moral blameworthiness. As the *YCJA*'s Declaration of Principle emphasizes in subparagraph 3(1)(b)(ii), "fair and proportionate accountability" of young persons must be "consistent with [their] greater dependency...and their reduced level of maturity." Section 38, which contains the purpose and sentencing principles of the *YCJA*, indicates that:

The purpose of sentencing ... is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

[39] The relevant sentencing principles referenced in section 38 of the *YCJA* include: parity -- that a young person's sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances; proportionality -- that the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence; and, subject to the proportionality principle, that the sentence be the least restrictive sentence that is capable of achieving the overall purpose of sentencing; that it be the one most likely to rehabilitate the young person and reintegrate him or her into society; and that it promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community. Introduced by Bill C-10, a judge imposing a youth sentence may now also advert to the objectives traditionally associated with adult

sentencing – denunciation and deterrence. This is discretionary and I have not factored either denunciation or deterrence into my sentencing calculus.

Issue #1 *Has “Y” Been Convicted of a “violent offence” within the meaning of section 2 (c) of the YCJA?*

[40] The Crown submits that “Y” has committed a “violent offence” under section 2 of the *YCJA* where one of the definitions for a “violent offence” (and the only one that could be applicable in this case) reads as follows: “an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.”

[41] I find that in the commission of the offence of possession of the “selfies” for distribution, “Y” endangered the life or safety of “A” by creating a substantial likelihood of causing psychological harm. As a matter of law, psychological harm is encompassed within the term “bodily harm”, including in the context of the *YCJA*. (*R. v. C.D.*, [2005] *S.C.J. No. 79*, paragraph 20) In this case the evidence has established that “Y”’s offences caused psychological harm to the victim. “A”’s testimony disclosed the extent of the psychological harm she suffered and the ongoing harm was apparent from her demeanor in the witness box. I note that the Supreme Court of Canada, although discussing the issue of what constitutes a “violent offence” in a different and earlier legislative context under the *YCJA*, preferred a harm-based definition of “violent offence.” The Court’s reasoning included approval for a focus on the effects of violence, that is, the harm, “rather than on the means employed to produce the effects (i.e. force).” A harm-based analysis of “Y”’s offences brings them within the *YCJA*’s definition of a “violent offence.”

[42] Other Youth Justice Courts have found that the offences of possession and distribution of child pornography, committed by teenaged boys extracting sexualized images from teenaged girls, constitutes a “violent offence” under the *YCJA*. (*R. v. G.(N.)*, 2014 *MBPC 63*; *R. v. T.(C.N.)* 2015 *NSPC 43*)

[43] The “violent offence” finding puts “Y”’s offending in a sentencing range that includes custody and triggers a section 109 *Criminal Code*/section 51 *YCJA* weapons prohibition order.

[44] In the Crown's submission, a "violent offence" finding amplifies "Y"'s moral blameworthiness and brings probation into focus as the sentence that best serves the fundamental sentencing principle of accountability. The Crown submits that a conditional discharge in this case is not appropriate given the seriousness of "Y"'s offences and the degree of his responsibility for them.

Issue #2     *Probation versus a Conditional Discharge and the Purpose and Principles of Sentencing under the YCJA*

[45] Although the nature of the sentence order is in dispute, there appears to be a consensus between Crown and Defence that the duration of the order is driven by the requirements of accountability and "Y"'s rehabilitative needs. What I must determine can be stated in this way: does a probation order fail to respect the "least restrictive" principle of youth sentence and, on the other hand, does a conditional discharge represent too little accountability?

[46] The main difference between a probation order and a conditional discharge is the length of time that a young person's record is accessible under section 119 of the *YCJA*. The three year period during which the record can be accessed runs, where a conditional discharge is ordered, from the date of the finding of guilt (section 119 (2)(f) – 3 years) and in the case of probation, from the time the sentence is completed. (section 119(2)(h) – 5 years in the case of an indictable offence) Access to a record for a young person sentenced to probation is extended if there are further convictions during the period of access. If an adult offence is committed during the period of access, the youth record, "in effect, converts" to an adult record where the original sentence was not a discharge. (*R. v. P.J.S.*, [2008] *N.S.J. No. 538 (C.A.)*, paragraph 15)

[47] So although the sentence orders for a conditional discharge and probation may look the same, they are different. There is a shorter period of access to the record of a young person who receives a conditional discharge which makes the sentence less onerous, in this respect. But when it comes to conditions, the difference effectively disappears. Many of the same conditions that could be found in a probation order can be imposed on a young person being conditionally discharged as the court is empowered to impose any discretionary conditions it considers appropriate, including reporting and supervision. (*section 42(2)(c)*, *YCJA*)

[48] And all youth sentences operate the same. Under section 82 of the *YCJA*, a young person is “deemed not to have been found guilty or convicted” upon the expiry of the sentence order. A conditional discharge does not result in a young person being “deemed not to have been convicted” until the sentence is completed. No matter what sentence a young person receives under the *YCJA*, the finding of guilt under section 36 is registered against them for the duration of the sentence order.

[49] In *R. v. R.P.*, [2004] O.J. No. 3845, Duncan, J. of the Ontario Court of Justice made the following observations about conditional discharge and probation orders under the *YCJA* and the principle of accountability:

**16** However there are also the principles that a youth sentence be meaningful, proportional and hold the youth accountable. There is a perception that a youth conditional discharge is a significantly more lenient disposition than youth probation -- and therefore it might be argued that, in many cases, a discharge would not give effect to these principles...The perception of leniency may be fostered by the structure of section 42 of the Act that suggests a hierarchy of sanctions with conditional discharges at the lower end. But I think the perception is mainly caused by judges and lawyers habitually - and wrongly - thinking in adult terms when dealing with youth matters. As discussed above, the “big break” of no criminal record that is the central feature of an adult discharge is not part of the youth scheme. The discharge advantage to an offending youth is miniscule. In my view, it is incorrect to consider that a youth conditional discharge under 42(2) (C) is necessarily a more lenient disposition than a youth probation order under 42(2)(K). Rather, it is the length of the term and the conditions that are imposed that determine the strictness/leniency of the sanction and not the vehicle, - probation or discharge - that is used. The leniency of a conditional discharge per se as compared to probation is largely misperceived and over-stated in youth matters. Properly viewed, there is no reason why the principles of proportionality

and accountability cannot be achieved as effectively through a discharge as probation.

[50] Either a probation order or a conditional discharge order will, when it terminates, result in “Y” being deemed not to have been convicted. That point will come sooner if “Y” receives a conditional discharge. In the meantime he will bear the consequence of a conviction for a highly stigmatized offence - possession of child pornography. And while it is often raw and uncalibrated, stigma is an expression of societal values.

[51] Section 3(1)(c)(i) the *YCJA* provides that “within the limits of fair and proportionate accountability, the measures taken against young people who commit offences should reinforce respect for social values.” The measures designed to achieve this in “Y”’s case will be the conditions imposed on him whether under a probation order or a conditional discharge order. But some amount of reinforcement is already operating: the stigma associated with “Y”’s offences does serve as a feature of the accountability that is already in play.

[52] There is no dispute that “Y”’s offences, underpinned by his callous, deliberate targeting and torment of “A”, were very serious. He operated under a cloak of anonymity and persisted in victimizing a fragile, suicidal girl. He engaged in a campaign that was purposefully dehumanizing and heartless. He appears to recognize that now.

[53] Notwithstanding the significant degree of moral responsibility borne by “Y”, it is relevant to the issue of holding “Y” to account that he perpetrated his offences as a highly vulnerable young person with very significant mental health issues. “Y”’s precarious mental health, social dysfunction and isolation played a contributing role in his offending.

[54] Having account for the factors I have just reviewed and because accountability in “Y”’s case will be achieved through the duration of his sentence order and the nature of the conditions imposed on him, I fail to see how a conditional discharge is too little accountability. And it is my view that a probation order, in this case, does not satisfy the requirement under the *YCJA* that, having taken proportionality into account, the sentence be the least restrictive sentence capable of achieving the purpose set out in section 38 of the *Act*. I have concluded

that the just sanction with meaningful consequences that will hold “Y” to account and promote his rehabilitation and reintegration into society is a conditional discharge with a duration of two years.

Issue #3 *What Conditions Should Be Imposed on “Y”?*

[55] “Y”’s conditional discharge order will contain the following conditions:

**General Conditions**

1. Report to a youth worker at 1256 Barrington Street, Suite 200, Halifax, Nova Scotia (902-424-4011) within 2 days of the start of this order and thereafter as directed by your youth worker.
2. Notify your youth worker in advance of any change of address, employment or education.
3. Reside with your parents at “...”in Halifax, Nova Scotia unless permission is obtained from the court to reside elsewhere.

**Internet Restrictions**

4. (a) Subject to 4(c), you are not to possess or use any computer or other data storage recordable device capable of accessing the Internet except while in school or educational classes, while performing research as part of the educational facility’s educational curriculum, or at work, and only then while in an area that is supervised by an adult who is at least 21 years old.  
  
(b) Subject to 4(c), you are not to possess any computer or other data storage recordable device capable of accessing the Internet while at home except while under the direct and immediate supervision of your mother or father.  
  
(c) At no time shall you
  - (i) Access any internet-facilitated computer/video game;
  - (ii) Access any internet based social media sites including but not limited to Facebook, Twitter, Tumblr, or Instagram.

**Contact Restrictions**

5. Do not contact or try to contact “A” (a.k.a. “A”) at any time for any reason whether directly or indirectly.

### **Employment and Education**

6. If directed by your youth worker, make reasonable efforts to locate and maintain suitable employment.
7. If direct by your youth worker, use your best efforts to enroll in an education or training program and if accepted attend as required.
8. If direct by your youth worker, complete high school credits by distance education.

### **Treatment and programming.**

9. Attend programs and activities with the Halifax Youth Attendance Centre as directed by your youth worker.
10. Attend for such assessment and counselling or program as directed by your youth worker.
11. Attend as directed by your youth worker for the IWK Health Centre Initiative for Sexually Aggressive Youth (ISAY) and/or the Provincial Forensics Sexual Behavior Program (FSBP).
12. Participate in and cooperate with the assessment, counselling or program directed by your youth worker.

### **Community Service Work**

13. Complete 100 hours of community service work under the direction and supervision of your youth worker/provincial director by 1 September 2017. The community service hours can be reduced or eliminated on application to the court if your youth worker is advised by a health professional engaged with your treatment that fewer or no hours should be performed.

### **Release of Section 34 Assessment**

14. The section 34 assessment is to be released to:
  - (i) Your youth worker;
  - (ii) Any treatment providers assisting you pursuant to this Order, including the ISAY and FSBP program; and
  - (iii) Your parents.



[56] I have some concluding comments to make about the conditions that I am imposing. I have concerns about the social media restrictions further isolating “Y” and impairing his ability to overcome his social anxiety and reintegrate into society. It will also be important for “Y” to eventually re-establish a healthy engagement with social media. Having said that, the nature of “Y”’s offending makes it inappropriate to permit social media access unless and until he has made progress on identifiable rehabilitative goals and it can be demonstrated that some relaxation of the social media restrictions would be consistent with his rehabilitation.

[57] I have decided to accept the Crown’s recommendation that “Y” perform 100 hours of community service work (which effectively works out to an hour a week over the duration of this sentence) despite my concerns, and the submission by Mr. Planetta, that this number of hours is overly onerous. The purpose of the community service hours is accountability but not at the expense of “Y”’s mental health or his rehabilitation. Including community service hours in “Y”’s sentence order also provides the opportunity for him to find, with the assistance of his youth worker, a creative option or options to re-engage with the community and experience a positive, normalizing social activity. If this condition is incompatible with “Y”’s therapeutic course then it can be varied on application to the court.

[58] The Crown recommended that “Y”’s sentence order should direct that he remain away from children under the age of 14 years old except when in the company of his parents or an adult approved by his youth worker. I am declining to include this proposed condition. It emerges from a recommendation in the section 34 psychological assessment. In that recommendation, that “Y” be restricted from having any unsupervised contact with children younger than 14 years, the assessor indicated the following:

It is highlighted that the present assessor was unable to completely confirm or deny any current sexually deviant interests on the part of “Y”. . . . . Moreover, his offence did not included (sic) elements of deviant arousal to children, given that the victim was a same-aged peer...

[59] As the section 34 assessment acknowledges, there is no basis for restricting “Y”’s access to children under 14, either in the assessment or on the facts of “Y”’s

offences. To do so would be to impose a condition arbitrarily and, in my view, would unfairly stigmatize “Y”.

[60] I will add that the conditions I have accepted for inclusion in “Y”’s sentence order are derived from the recommendations made in the section 34 psychological assessment. Other recommendations from the assessment directed at addressing “Y”’s mental health issues and his social isolation and anxiety will, I hope, be incorporated into his treatment.

[61] “Y”, it is no longer an option for you to be disengaged from therapeutic interventions directed at helping you achieve positive mental health and re-connect with the world outside your bedroom. You must now realize that being avoidant hasn’t worked for you. It is time to be motivated and determined and chart a new course for your life.

*Ancillary Orders*

[62] I have signed the requested forfeiture order and will sign the DNA and weapons prohibition order (for 2 years) once they are provided to me.