

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. C.S.*, 2023 NSPC 34

**Date:** 2023-05-05

**Docket:** 8558036, 8558037, 8558038

**Registry:** Amherst

**Between:**

His Majesty the King

v.

C. S.

**Restriction on Publication: 486.4**

**Any information that will identify the complainants shall not be published in any document or broadcast or transmitted in any way.**

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**DECISION ON SENTENCE**

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**Judge:** The Honourable Judge Rosalind Michie

**Decision:** May 5, 2023

**Charges:** *Criminal Code 271, Criminal Code 152, Criminal Code 151*

**Counsel:** Mr. Paul Drysdale, for the Provincial Crown  
Mr. James Goodwin, for the Defence

**Order restricting publication — sexual offences**

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day;  
or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

**By the Court**

[1] The accused was charged on a three-count information alleging that the accused did:

*... between the 5th day of July, 2017 and the 28th day of November, 2021, at or near Amherst, Nova Scotia, commit a sexual assault on T. S. contrary to Section 271 of the Criminal Code;*

*And furthermore, between the 5th day of July, 2017 and the 28th day of November, 2021, at or near Amherst Nova Scotia, did for a sexual purpose invite T. S., a person under the age of sixteen years to touch directly with a part of his body contrary to Section 152 of the Criminal Code;*

*And furthermore, between the 5th day of July, 2017 and the 28th day of November, 2021 at or near Amherst, Nova Scotia, did for a sexual purpose touch T. S. a person under the age of sixteen years directly with a part of his body to wit: his hands, mouth and penis, contrary to Section 151 of the Criminal Code.*

[2] With respect to this matter, the issue is what is the appropriate sentence for a 45-year-old offender who committed the offence of sexual interference against his ex-girlfriend's child over the course of four years, starting when she was seven years old? Sexual interference is of the most serious type and unfortunately it escalated to vaginal penetration on multiple occasions. The accused has no prior criminal record.

[3] There is absolutely no question that a federal period of incarceration is the fit and appropriate sentence for this offence. The question is the length of that

sentence. Defence counsel suggests that a four-year period of incarceration in a federal penitentiary would be the appropriate sentence in this matter, while the Crown submits that the appropriate sentence would be in the range of seven years, along with numerous ancillary orders.

[4] On the 20th day of November 2022, the accused elected trial in Provincial Court and entered a guilty plea to count three, the charge of sexual interference contrary to section 151 of the *Criminal Code*. The sentencing hearing was adjourned pending the preparation of a pre-sentence report. I also received helpful submissions from both Crown and defence counsel, for which I am grateful.

[5] The following documents were submitted for consideration:

- Agreed statement of facts;
- Pre-sentence report; and
- Victim impact statement.

### **Agreed Statement of Facts**

[6] The agreed statement of facts was read into the record by Crown counsel. It disclosed a long-term and horrendous litany of sexual abuse of a female child by the live-in boyfriend of the child's mother, characterized by the Crown as

effectively the victim's stepfather. He was in a relationship with T. S.'s mother, D. B. from approximately July 5<sup>th</sup>, 2017, until November 29<sup>th</sup>, 2021.

[7] Over a period of approximately four years, the accused sexually molested and abused T. S., beginning when she was in grade three with touching, leading to penetrating her with his fingers, kissing her on her private parts, with an escalation to full vaginal penetration with his penis on many occasions. The sexual assault took place in the victim's bed and in other places throughout the home where she lived. The incidents occurred at different times, late at night, after school, or while her mother was away.

[8] The first incident occurred when T. S. was in grade three. The accused came into her bedroom in the middle of the night and lay down beside her. He touched her with his hands, above and below her clothing, on her breast area, on her buttocks and her vagina. She described him placing his fingers inside her vagina.

[9] T. S. pretended to be asleep while this occurred, and this was her means of dealing with the assaults. She did on occasion try to roll away from him while still pretending to sleep. She did not resist or cry out because she was afraid that he might hurt her. She expressed her fear in the following words:

*“...and then I would wake up to him doing it, but you’re scared, so you just... You’re frozen, and he didn’t... I don’t... He thought I was sleeping, so you just act like you’re sleeping, because you’re so scared that what would he do if you were actually awake.”*

[10] All of these incidents occurred in the victim's home while her mother was away or sleeping in her room. This touching occurred regularly, one or more times per week over a period of approximately four years.

[11] The accused would arrange to be sleeping out of T. S.’s mother’s room, claiming that she snored. The complainant remembered her mother coming into her room on more than one occasion to find the accused in her bed, and she noted that he would jerk away to hide what he was doing.

[12] T. S. described taking steps, such as spreading Lego bricks on her floor to give her warning when the accused entered her room at night. One way that the complainant knew that what happened was not a dream was that when she would wake up in the morning, there would be a path cleared in the Lego toys from her door to her bed.

[13] The sexual assaults by C. S. escalated quickly from touching with his hands both under and over her clothing, to him removing her clothing and kissing her on her body, eventually leading to full penetrative sexual intercourse. She

described him kissing her on her mouth, noting that it was “gross” and “that his breath stank”.

[14] T. S. described the first incident of C. S. penetrating her vagina with his penis in the living room of her home when she was seven or eight years old. She was sleeping on the couch and C. S. removed her clothing, lifted her leg, placed it over the edge of the couch and penetrated her with his penis. She described how that hurt her.

[15] T. S. also described that on some occasions, C. S. had taken her hand in his and placed it on his penis. She noted that he had never asked her to do this, because she was pretending to be asleep, and that he simply placed her hand there. T. S. describes several incidents where C. S. was mumbling, either to himself or while the assaults were taking place and she felt it may have been that she wasn't as convincing in feigning sleep as she would have liked, because on one occasion, C. S. told her not to tell her mother because he would hurt her.

[16] T. S. never saw C. S.'s penis because she always had her eyes shut.

[17] The victim also described incidents of C. S. penetrating her vagina with his penis from behind. He would roll her over on her stomach with her face down on her pillow and raise her hips in the air and penetrate her from behind. This

would last for 30 or more minutes at a time. She was uncertain as to whether C. S. wore a condom.

[18] The sexual abuse continued while she entered puberty. T. S. described times when C. S. would remove her clothing and see that she was wearing sanitary pad and then he would stop what he was doing. T. S. noted occasions when her stomach would bloat and feel uncomfortable, and she feared that she might be pregnant. While that was not the case, T. S. did state to her teacher that she would have killed herself if she had become pregnant.

[19] T. S. noted many of the incidents, including the one on November 29, 2021, had occurred between 2:00 a.m. and 3:00 a.m. and would last for between 30 and 45 minutes at a time. The incident on November 29, 2022, included C. S. assaulting T. S. with his hands, his mouth and by penetrating her vaginally with his penis.

[20] The abuse finally came to light when T. S.'s teacher contacted her mother to report that T. S. had threatened to kill herself and had engaged in acts of self harm, notably cutting herself.

[21] Following arrest, the accused reluctantly admitted to most of the actions described by T. S.



## **Victim Impact Statement**

[22] A victim impact statement was prepared by T. S.'s mother, which was read into the record at the sentencing hearing by the Crown. I reviewed that victim impact statement very carefully. This statement relates the terrible harm that T. S. has suffered as a result of her abuse at the hands of the accused. He is a man that she should have been protected by, and not need protection from. This was an extremely high-level serious case of sexual abuse. T. S.'s mother disclosed in the victim impact statement that T.S. is experiencing the following things:

- Anxiety and stress;
- Loss of trust;
- Insecurity about her body and her self-image;
- Difficulty in carrying out everyday activities and maintaining relationships with the people who care for her;
- She now requires medication to deal with her anxiety stemming from what the accused did to her;
- T. S. now requires ongoing therapy, currently for two hours per week;
- She suffers from sleep loss, due to waking up in the middle of the night;

- She suffers from fear that the accused is going to return to her home and hurt both herself and her family;

[23] T. S.'s mother has experienced the financial loss and the emotional impact in dealing with the impact on T. S. She is required to take time off from work to get to appointments to and from therapists, to pay for medication, to travel T. S. to school frequently to deal with her inability to cope. This can be expected to continue for a very long time into the future.

### **The Pre-Sentence Report**

[24] C. S. is a 45-year-old male offender with no prior criminal record.

[25] C. S. described his childhood as traumatic, chaotic, difficult, and stressful, and this characterization of his childhood is clearly accurate. C. S.'s parents separated when he was three years old, after which he lived with his mother, brother and sister. He described experiencing poverty in his younger years, including struggling through school without enough food to eat, and his mother struggling to find stable housing following evictions.

[26] At the age of 12, the subject's mother abandoned all of her children, and she moved in with a boyfriend. The children's father would not acknowledge them, so according to C. S. they were all left stranded and abandoned by both of their

parents. They were forced to survive and raise themselves. They were able to stay together by moving in with C. S.'s older brother's girlfriend, which is why the Department of Community Services never became involved. According to C. S., in his formative years he had no love, care or discipline from his parents, and was essentially raised by his older brother.

[27] C. S. also disclosed an unreported sexual abuse committed on him by an aunt when he was six years old.

[28] C. S. enjoys a close relationship now with his mother and his older brother, but has had no contact with his sister for the past several years.

[29] The offender has a 16-year-old daughter from a prior relationship that ended badly.

[30] The probation officer made telephone contact with two individuals, the subject's niece, J. G., who noted her close relationship with C. S. and stated for the writer that she in her words "totally would trust C. S. to be around her child". She said that he spent a lot of time with his stepdaughter and that she could never imagine C. S. hurting her in any way. J. G. was in shock after hearing the allegations and said she still does not believe them. She did not know the reason why this could be happening to C. S.

[31] The probation officer also contacted the accused's brother, W. S., who confirmed their chaotic and traumatic childhood. He stated that he has a very close relationship with his brother and that they have daily contact. He was aware of his brother's charges, but he was in disbelief. According to him, his brother denies his involvement and the only regret was that his brother got into a relationship with the child's mother.

[32] The Crown raised the fact that C. S. had not revealed that he had pled guilty or acknowledged responsibility for the offences, so that would serve to mitigate the value of those comments and the letters of support, which I will reference a bit later, because these individuals were not aware of the fact that C. S. had taken responsibility for what had taken place.

[33] The offender has been employed as a seasonal labour with a local contracting company for the past six years, and his employer, M. E., also told the probation officer that C. S. denied his involvement in the incident and M. E. stated that he believed that C. S. would not be capable of such a crime and that the whole incident was terrible. However, M. E. did indicate that should C. S. be convicted of such a crime, that he would no longer have a position with his company.

[34] C. S. is otherwise a healthy 45-year-old man, who is experiencing some mental health issues with respect to the charge of sexual interference, to which he has pled guilty. He had considered suicide in the past as a result of the charges, but he has never attempted to do so.

When the probation officer discussed the circumstances surrounding the incident before the court with C. S., he did not know what to say. He reported that he accepts responsibility for his actions, however, it is important to note, that in the next sentence he indicated he did not have the financial means to fight some of the allegations that were brought forth in court, therefore taking a guilty plea. The Court confirmed prior to the sentencing hearing that C. S. was taking responsibility for the offences to which he had pled guilty. He indicated to the probation officer that he has had no further contact with the victim or her mother and that he feels bad about his actions and that it has weighed heavily on his conscience, hence the suicidal ideation that he has had in the past. The probation officer expressed concern that C. S. had minimized his actions and did not understand the impact of his actions toward the victim. He accepted partial responsibility and displayed minimal regret or remorse for his behaviour.

## **Purpose and Principles of Sentencing**

### **PURPOSE.**

[35] With respect to the purpose and principles of sentencing, under section 718:

*718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:*

*(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;*

*(b) to deter the offender and other persons from committing offences;*

*(c) to separate offenders from society, where necessary;*

*(d) to assist in rehabilitating offenders;*

*(e) to provide reparations for harm done to victims or to the community; and*

*(f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community.*

### **OBJECTIVES – OFFENCES AGAINST CHILDREN.**

[36] Specifically, under Section 718.01:

*718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, **it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.***

### **OBJECTIVES – OFFENCE AGAINST VULNERABLE PERSON.**

[37] Also, under Section 718.04:

*718.04 When a court imposes a sentence for an offence that involved the **abuse of a person who is vulnerable because of personal circumstances** — including because the person is Aboriginal or female, but could also include because youth, or a physical disability or intellectual disability – the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.*

#### **FUNDAMENTAL PRINCIPLE.**

[38] Section 718.1 states:

*718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.*

#### **OTHER SENTENCING PRINCIPLES.**

[39] Section 718.2 states:

*718.2 A court that imposes a sentence shall also take into consideration the following principles:*

*(a) a sentence should be increased or reduced to account for any relevant **aggravating or mitigating circumstances** relating to the offence or the offender, and, without limiting the generality of the foregoing,*

...

*(ii) evidence that the offender, in committing the offence, **abused the offender's intimate partner or a member of the victim or the offender's family,***

*(ii.1) evidence that the offender, in committing the offence, **abused a person under the age of eighteen years,***

*(iii) evidence that the offender, in committing the offence, **abused a position of trust or authority in relation to the victim,***

*(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.*

...

*shall be deemed to be aggravating circumstances;*

*(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;*

*(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;*

*(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and*

*(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (emphasis added).*

## **Statutory Sentencing Regime**

[40] Section 151 of the *Criminal Code* reads as follows:

### ***SEXUAL INTERFERENCE.***

*151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years*

*(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or*

*(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.*



[41] In this case, the accused committed the offence in question while T.S. was between the age of seven and eleven years old.

[42] The mandatory minimum sentence for sexual interference has been declared unconstitutional by the Nova Scotia Court of Appeal in *the R. v. Hood, 2018 NSCA 18*.

[43] In the *R. v. Friesen, 2020 SCC 9*, at para. 5, the Supreme Court of Canada stated the following:

*“... A strong message that sexual offences against children are violent crimes that wrongfully exploit children’s vulnerability and cause profound harm to children, families, and to communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament’s sentencing initiatives and by society’s deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.”*

[44] This is a new era with respect to the sentencing of offenders who sexually abuse children. *Friesen, (supra)*, (paras. 51 – 68) set out the following principles in support of its direction that sentences should increase:

a) *“Sexual violence against children is thus wrongful because it invades their personal autonomy, violates their bodily and sexual integrity, and gravely wounds their dignity.”*

b) *“Personal autonomy refers to a child’s right to develop to adulthood free from sexual interference and exploitation by adults.”*

c) *“Adult/youth sexual relationships are inherently exploitative by reason of the lack of maturity, judgement, and experience of children.”*

d) *The focus on society’s view of these crimes has shifted from “sexual propriety to sexual integrity.” Thus it “... enables a greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity...”*

*“This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, ... may often be more pervasive and permanent in its effect than any physical harm.”*

e) *“Sexual violence can interfere with children’s self-fulfillment and healthy and autonomous development to adulthood precisely because children are still developing and learning the skills and qualities to overcome adversity... For this reason, even a single instance of sexual violence can “permanently alter the course of a child’s life.””*

f) *“Sexual violence causes additional harm to children by damaging their relationships with their families and caregivers. Because much sexual violence against children is committed by a family member, the violence is often accompanied by a breach of trust relationship... If a parent or family member is the perpetrator of the sexual violence, the other parent or family members may cause further trauma by taking the side of the perpetrator and disbelieving the victim.”*

g) *“Children may lose trust in the communities and people they know. They may be reluctant to join new communities, meet new people, make friends in school, or participate in school activities.”*

h) *“The ripple effects of sexual violence against children can make the child’s parents, caregivers, and family members secondary victims who also suffer profound harm as a result of the offence. Sexual violence can destroy parents and caregivers’ trust in friends, family, and social institutions and leave them feeling powerless and guilty... The harm to parents’ relationship with their children can also be profound. For instance, children can react to the sexual violence by shutting their parents out of their lives.”*

i) *“There is a broader harm to the communities in which children live and to society as a whole. Some of these costs can be quantified, such as the social problems that sexual violence against children causes, the costs of state intervention, and the economic impact of medical costs, lost productivity, and treatment for pain and suffering... In particular, children who are victims of sexual violence may be more likely to engage in sexual violence against children themselves when they reach adulthood... Sexual violence against children can thus fuel a cycle of sexual violence that results in the proliferation and normalization of the violence in a given community... In short, the costs that cannot be quantified are also profound.”*

j) *“There is an innate power imbalance between children and adults that enables adults to violently victimize them... Because children are a vulnerable population, they are disproportionately the victims of sexual crimes.”*

k) *“Children are most vulnerable and at risk at home and among those they trust.”*

l) *“Sexual violence also has a disproportionate impact on girls and young women.”*

[45] The fundamental principle of sentencing is finding the right balance between the gravity of the offence and the degree of responsibility of the offender. No two cases are alike. Sentencing is an individualized and delicate part of the criminal law process.

[46] With respect to the gravity of the offence, in *Friesen*, (*supra*), the Supreme Court of Canada stated that “... courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and (3) the actual harm the children suffer as a result of these offences”. (See *Friesen*, (*supra*), at para. 76).

[47] With respect to inherent wrongfulness the Supreme Court noted that any physical contact of a sexual nature by an adult against the child is always wrong, even if it is not accompanied by additional physical violence and does not result in physical or psychological injury.

[48] On the topic of potential harm, the Supreme Court of Canada observed that there are two categories of potential harm, “harm that manifests itself during the childhood, and long-term harm that only becomes evident during adulthood...” These forms of harm can be so profound that children are robbed of their youth and innocence.

[49] “These effects include overly compliant behaviour and an intense need to please; self-destructive behaviour, such as suicide, self-mutilation, chemical abuse, and prostitution; loss of patience and frequent temper tantrums; acting out aggressive behaviour and frustration; sexually aggressive behaviour; an inability to make friends and non-participation in school activities; guilty feelings and shame; lack of trust, particularly with significant others; low self-esteem; an inability to concentrate in school and a sudden drop in school performance; an extraordinary fear of males; running away from home; sleep disturbances and nightmares; regressive behaviours, such as bedwetting, clinging behaviour, thumb sucking, and baby talk; anxiety and extreme levels of fear; and depression.” (See *Friesen, (supra)*, at para. 80).

[50] With respect to potential long-term harm, the Supreme Court stated that the following harms may arise during adulthood:

First, child victims may have difficulty forming a loving, caring relationship with another adult.

Second, children who are victims of sexual violence are more likely to engage in sexual violence against children as adults.

Third, child victims are more likely to struggle with substance abuse, mental illness, post-traumatic stress disorder, eating disorders, suicidal ideation, self-harming behaviour, anxiety, depression, sleep disturbances, anger, hostility, and poor self-esteem as adults. (See *Friesen, (supra)*, at para. 81).

[51] With respect to actual harm, the Supreme Court noted that victim impact statements usually provide the best evidence of the actual harm suffered by the child and the parents and caregivers of the child.

[52] At this point, I paused to observe that in this case, many of what the Supreme Court of Canada characterized as potential harms, have crossed the threshold to actual harm in this case, as set out in the victim impact statement, including the anxiety, the inability to sleep and the loss of trust.

[53] With respect to moral blameworthiness of the offenders, the Supreme Court of Canada stated, “Put simply, the intentional sexual exploitation and objectification of children is highly morally blameworthy because children are so vulnerable.” (See *Friesen, (supra)*, at para. 90).

[54] The Supreme Court also directed the sentencing judge to give “... proper weight... to the offender’s underlying attitudes because they are highly relevant

to assessing the offender’s moral blameworthiness and to the sentencing objective of denunciation.” (See *Friesen, (supra)*, at para. 89).

[55] The Supreme Court of Canada made it clear that sentencing judges must not, however, disregard mitigating factors, including the fact that “sexual assault and sexual interference are broadly-defined offences that embrace a wide spectrum of conduct” and the relevant “personal circumstances” of the offender. (See *Friesen, (supra)*, at para. 91).

### **Sentence Ranges**

[56] With respect to the range of sentence to be imposed, the Supreme Court in *Friesen, (supra)*, noted that sentencing judges must respect and “give effect to” the fact that Parliament’s decision to increase the maximum sentences for offences against children shows that Parliament wanted such offences to be punished more harshly. (See *Friesen, (supra)*, at para. 100).

[57] In enacting section 718.01 of the *Criminal Code*, Parliament also gave priority to the sentencing objectives of denunciation and deterrence in cases of sexual offences against children. While this prioritization by Parliament does not render other sentencing principles, such as rehabilitation moot, it does significantly limit a sentencing judge’s discretion “such that it is no longer open to the judge to

elevate other sentencing objectives to an equal or higher priority.” (See *Friesen*, (*supra*), at para. 104).

[58] Thus, the Supreme Court noted as follows: “mid single-digit penitentiary terms for sexual offences against children are normal and that upper single-digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances.” Despite this, the court stated that “judges must retain the flexibility needed to do justice in individual cases.” (See *Friesen*, (*supra*), at para. 114).

### **Rehabilitation**

[59] The Supreme Court in *Friesen*, (*supra*), commented on various factors that sentencing judges have looked to in crafting an appropriate sentence. With respect to the intersection between rehabilitation and the likelihood to reoffend, the Supreme Court noted at para. 124:

*The offender’s likelihood to reoffend is clearly also relevant to the objective of rehabilitation in s. 718(d) of the Criminal Code. Courts should encourage efforts toward rehabilitation because it offers long-term protection (Gladue, at para. 56). Rehabilitation may also weigh in favour of a reduced term of incarceration followed by probation since a community environment is often more favourable to rehabilitation than prison (see Proulx, at paras. 16 and 22). At the same time, depending on the offender’s risk to reoffend, the imperative of providing immediate and short-term protection to*



*children may preclude early release. In these cases, efforts at rehabilitation must begin with such treatment or programming as is available within prison (see R. v. R.M.S. (1997), 1997 CanLII 12497 (BC CA), 92 B.C.A.C. 148, at para. 13). In some cases, the only way to achieve both short-term and long-term protection of children may thus be to impose a lengthy sentence (see R. v. Gallant, 2004 NSCA 7, 220 N.S.R. (2d) 318, at para. 19, per Cromwell J.A., as he then was).*

[60] Breach of trust continues to remain an aggravating factor.

[61] The existence of breach of trust is also likely to increase the harm to the victim and the gravity of the offence, and “... all other things being equal, an offender who abuses a position of trust to commit a sexual offence against a child should receive a lengthier sentence than an offender who is a stranger to the child.” (See *Friesen, (supra)*, at para. 130).

[62] The duration and frequency of the sexual violence is also an important factor. Repeated and prolonged assaults increase the offender’s degree of responsibility will attract a higher sentence. (See *Friesen, (supra)*, para. 131 – 133).

[63] The nature and degree of the physical interference the child was subjected to is aggravating, but a sentencing judge must not fall into error by over or under emphasizing it.

[64] The Supreme Court also squarely addressed the importance that sentencing judges must place on the degree of physical interference that the child was subjected to, noting that in the past, sentencing ranges have varied depending on whether the offender subjected the victim to vaginal penetration, anal penetration, fellatio, cunnilingus or touching. While finding that such categorization is a recognized aggravating factor, the Supreme Court cautioned sentencing judges not to fall into error by placing undue emphasis on it. The Court noted that this is potentially an error for the following reasons:

- It resurrects traditional views of sexual assault which Parliament has chosen to abolish.
- Courts should not assume that there is a clear correlation between the nature of the physical act and harm caused to the victim. In particular, it potentially ignores emphasis on psychological and emotional harm.
- It minimizes the inherent wrongfulness of any form of sexual violence against a child.
- There is no ladder or hierarchy of physical acts that inform the degree of physical interference with the child. (See *Freisen, (supra)*, paras. 141 – 147).

### **The Effect of a Guilty Plea**

[65] A guilty plea is not necessarily a significantly mitigating factor where the Crown's case against the offender is overwhelming. (See *Friesen, (supra)*, para. 164).

### **The Effect of Remorse**

[66] The degree to which an offender's expression of remorse is aggravating is "paired with insight and signs that the offender has "come to realize the gravity of the conduct, and as a result has achieved a change in attitude or imposed some self-discipline which significantly reduces the likelihood of further offending." (See *Friesen, (supra)*, para. 165).

### **The Effect of the Location of the Offence**

[67] The fact that an offence took place in a child's home may be aggravating "because it damages the child's sense of security in the home environment." (See *Friesen, (supra)*, para. 178).

### **Post-Friesen Cases**

[68] The Crown provided several Post-Friesen, Nova Scotia cases for authority on how courts have responded to the unique combinations of aggravating and mitigating factors in cases broadly similar to the case at bar: that is to say, cases

where the accused has been convicted of sexually abusing a child in his care, or on multiple occasions, over an extended period of time.

Case	Brief Summary	Sentence Imposed
<u>R. v. S. P. W., 2021 NSPC 24 (CanLII)</u>	Six (6) year old girl disclosed sexual abuse by her 43-year-old father during access visits over 18-month period, including oral sex, masturbation and unsuccessful attempts at vaginal and anal penetration. Accused a high school graduate, self-employed, limited criminal record. Below-average risk to re-offend. Abused position of trust. Accused accepted full responsibility and was genuinely remorseful.	56 months, less remand credit.
<u>R. v. Hughes, 2020 NSSC 376 (CanLII)</u>	Over 11-year period, indigenous male victim was groomed and sexually abused by a “friend” and eventual “caregiver,” leading to repeated instances of oral and anal intercourse. Accused denied responsibility and was convicted after trial. Accused maintained innocence. Accused 71 years old at time of sentencing. Accused had dated prior record for gross indecency and keeping a bawdy house.	Six years
<u>R. v. AMB, 2022 NSSC 262 (CanLII)</u>	Accused met the mother of victim in late 2009 and moved in with them soon after and until they separated in October 2018. Accused and victim’s mother had two children other than the victim. Between July 2018 and December 31, 2019, accused manipulated victim’s breasts, made victim fellate him (30 occasions) and had vaginal (two times) and anal (five times) intercourse with her. Crown sought sentence of seven to nine years. Accused convicted after trial. Sexual Offender Assessment indicated average risk to re-offend.	Seven years, less remand credit
<u>R. v. C.A.L., 2021 NSSC 365 (CanLII)</u>	Accused convicted following trial of sexual assault and sexual touching of victim between the 19 <sup>th</sup> day of July 2013 and 19 <sup>th</sup> day of July, 2017. Abuse mainly after victim turned ten years of age, and involved	Three years, six months

	touching and kissing, including touching her vagina inside and outside her clothing. This would include him lying on top of her. No criminal record. Supportive family. Medical issues. Position of trust. No efforts at rehabilitation. Various cases, both pre- and post-Friesen, considered	
<u>R. v. SJM, 2021 NSSC 235 (CanLII)</u>	Accused pleaded guilty, not early but prior to trial, to Sexual Touching, Sexual Exploitation, Sexual Assault and making child pornography, between April, 2013 and April, 2018. Victim was 13 years of age when she came to Canada to join her mother, and was dependent on the accused from the first. Abuse started immediately up[on arrival and started with touching and exposing accused's erect penis, leading to digital penetration of the victim's vagina by the accused, the accused making the victim masturbate him and eventually leading to vaginal intercourse without a condom and anal penetration of the victim with sex toys. The victim convinced herself she was in love with the accused. The accused was controlling, and the victim became suicidal. The accused took photographs of the victim, naked, and bought her alcohol and money to buy marijuana. Crown sought 9 years and submitted case law, which was discussed. Justice Rosinski determined a range of sentence between seven and nine years for the s. 151/153 offences, absent totality.	Nine years, with totality considered, less remand credit.

[69] Defence counsel provided two further cases for consideration:

Case	Brief Summary	Sentence Imposed
R. v. Wood 2021 N.S.J. No. 345 (NSSC)	Accused pled guilty to sexual interference with 15 year old and creation of child pornography. Guilty plea without joint rec. considered a strong mitigating factor.	Four years, seven months
R. v. A.P.L. [2021] N.S.J. No. 325 (NSSC)	Accused convicted of one count of sexual interference and sexual exploitation each. Offences occurred over 6 years starting when victim was 12.	Six years

<u>R. v. G.P.W., [2021]</u> <u>N.S.J. No. 232</u> <u>(NSSC)</u>	Accused was convicted of two counts 271, 151 x 2 and two counts producing child pornography. Victims were nieces of accused, aged 10 and 11 and offences occurred over a two year period.	Six years
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[70] Taking all of the foregoing factors and the relevant caselaw into consideration, the Crown respectfully submitted that a sentence in the seven-to-nine-year range is appropriate in the circumstances.

[71] The accused submits that four years would be an appropriate sentence in this matter. The accused bases this on the early guilty plea, which should be considered to be the most significant mitigating factor, in essence saving the victim from being re-victimized having to testify at trial. The accused provided letters of support from two individuals, his partner, and his mother. The value of these letters and the references provided by his brother, niece, and employer in the pre-sentence report are diminished somewhat by the fact that he had not disclosed to these letter writers and references that he committed the offences charged, taken responsibility and pled guilty. His current partner expresses chagrin at how inconvenienced the accused has been over the past two years as a result of the accusations made against him, and his brother denies that he could do such a thing. His employer expressed similar sentiments.

## **Analysis**

### **Aggravating Factors**

[72] I take these aggravating factors into consideration when sentencing C. S.:

**1. Age of the Victim:** T.S. was between seven and eleven years old when she was sexual abused by the offender.

**2. Position of Trust:** T.S. first knew the offender as the boyfriend of her mother and a caregiver and I agree with the Crown that he was, in effect, for that period of time acting as a stepfather. The offender and T.S. lived together for approximately four and a half years and while the offender may not consider his relationship with T.S. and her mother as a significant one, the harm caused by him to this child most certainly is. As the Crown noted in their sentencing brief, the focus in such cases should be the extent to which the relationship of trust was violated. (See *Friesen, (supra)*, at para. 41).

I find that C. S. occupied a position of trust in that he would have been the sole caregiver while T. S.'s mother was out of the home. She placed her trust in him to take care of her child. I also agree with the submissions of the Crown that T. S. and her mother, in addition to society as a whole,

expected and required him to protect her, and not prey upon her. He was in a position of trust, and it speaks to a high degree of moral blameworthiness.

**3. The serial nature of the abuse:** The agreed statement of facts sets out that the sexual abuse occurred over extended period of time, beginning in grade three and quickly escalating from touching, both over and under clothing to digital penetration, to oral sex and then to vaginal intercourse.

**4. Evidence of grooming:** This is not a case where this factor is significant. C. S. was not required to cultivate his relationship with the victim, as the Crown phrased it, “it was handed to him”.

**5. The nature and gravity of the sexual acts:** Nature gravity of the sexual violence perpetrated on the victim was outlined in the agreed statement of facts. The actions were of the most serious nature, highly invasive involving significant bodily interference including vaginal intercourse. The sexual assaults were frequent in number and of a prolonged duration, from between 30 to 40 minutes at a time. The agreed statement facts also revealed that on one occasion, C. S. used the



expressed threat of violence to convince T. S. not to tell her mother about the abuse, telling her that if she told her mother “... he would hurt her.”

**6. Location of the abuse and the victim’s vulnerability:** The sexual abuse occurred in T. S.’s home, where she should have been expected to feel the most safe. T. S. was a young child completely at the mercy of the man whose care her mother felt safe leaving her. T. S. was also vulnerable given her young age.

**7. Victim Impact:** I have already noted earlier in this decision the heartbreaking and devastating impact that this crime has had on the victim. And I have also noted that some of those deep-seated psychological effects noted in *Freisen, (supra)*, were expressed in this case. T. S. has self harmed, she has had thoughts of suicide, she now requires medication, suffers from sleep disturbances, anxiety and a myriad of other things outlined in her victim impact statement.

### **Mitigating Factors**

[73] I have considered the mitigating factors present in this case:

**1. Lack of Prior Criminal Record:** C. S. does not have a prior criminal record. Although the lack of a criminal record suggests that the accused has been, except for the offence for which he is being sentenced today, a law-abiding citizen. The Crown put forth that this fact alone is of limited mitigating value. I note the comments of Justice Cacchione in *R. v. D.A.M., 1999 CanLII 18578 (NS SC)*, wherein the defendant's criminal antecedents were considered. Justice Cacchione concluded that "these cases and others describe the sexual abuse of children by an adult as a reprehensible crime calling for a sentence of denunciation. The lack of a prior criminal record was held by these cases to not be unusual and to not militate against a sentence of lengthy incarceration." (See para. 67).

**2. Guilty Plea:** C. S. has entered a guilty plea without the benefit of a joint recommendation. He has acknowledged his wrongdoing in a statement to the police and signed as part of the plea process, an agreed statement of facts.

[74] A guilty plea is an acknowledged mitigating factor, and a welcome one in that it preserves scarce court resources and prevents the re-traumatization of a victim by requiring them to testify at a trial. The guilty plea also provides certainty of

outcome and finality. It also provides acknowledgement by the offender of the wrongfulness of his actions, an expression of remorse, and a positive step towards the acceptance of responsibility. It also provides some insight into the accused prospects of rehabilitation and the likelihood of his future reoffending. The Crown noted that it is, however, distinctly possible for an offender to undermine the mitigative value which comes from his guilty plea. The Crown submits this was done in the following ways by his comments made in the pre-sentence report:

- He minimized his responsibility.
- He showed little insight about the impact of his actions or the harm his actions have caused and will continue to cause T. S. for the rest of her life. It is the Crown's position that he denied the offence to his family and employer, in the face of a guilty plea. It is certainly his right to disclose his offences to whomever he wishes, he is entitled to his privacy, but it does serve to reduce the value of the comments and letters of support that he received from family members and friends, since they were unaware that he had in fact acknowledged and pled guilty to the crimes for which he was charged.
- He expressed little, to no regret or remorse in the pre-sentence report.

## Conclusion

[75] After taking into consideration all of the relevant factors, I find that the appropriate sentence is a period of incarceration for seven years.

[76] I impose the following ancillary orders:

- A primary DNA order pursuant to section 487.051(1) the *Criminal Code*, this is a primary designated offence;
- Pursuant to section 490.012(1) of the *Criminal Code*, an order requiring the accused to comply with the sex offender registration act for a period of 20 years;
- Pursuant to section 109(1)(a.1) and 109(2)(a)(ii) of the *Criminal Code*, an order prohibiting the offender from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of 10 years after the offender is released from imprisonment;
- Pursuant to section 743.21 of the *Criminal Code*, an order prohibiting the offender from communicating, directly or indirectly, with T.S. during the custodial period of this sentence; and

- Pursuant to section 161 of the *Criminal Code*, an order prohibiting contact by the offender with children under the age of 16 years.

[77] I would waive the imposition of the victim fine surcharge in this case.

Judge Rosalind N. Michie, JPC