**PROVINCIAL COURT OF NOVA SCOTIA**
**Citation:** *R. v. D.C.*, 2024 NSPC 27

**Date:** 20240501
**Docket:** 8605225
**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

D.C.

**SENTENCING DECISION**

**Restriction on Publication: 486.4 Criminal Code**
**Any information that will identify the complainant, victim or witness shall not be published in any document or broadcast or transmitted in any way.**

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| **Judge:** | The Honourable Judge Bronwyn Duffy |
| **Heard:** | March 21, 2024 |
| **Decision** | May 1, 2024 |
| **Charges:** | s. 271 *Criminal Code of Canada* |
| **Counsel:** | Stacey Gerrard, for the Public Prosecution Service<br>Peter Kidston, 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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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] D.C. is before the Court to be sentenced on one Indictable count of committing a sexual assault on J.M., contrary to section 271 *Criminal Code* (CC). Defence elected to proceed in this Court, and D.C. was tried and convicted (2024 NSPC 1). When prosecuted by Indictment, if the complainant is under the age of 16 years, the offence of sexual assault carries a maximum penalty of 14 years' imprisonment. The legislation in its current implementation prescribes a minimum punishment of imprisonment for a term of one year; I will return to that point. The minimum punishment was in place during the timeframe of the commission of this offence, coming into force and effect in 2012. D.C. is subject to police-issued bail process in accordance with the provisions of Part XVI.

[2] There is a 486.4 Order in effect restricting publication, and particularly, directing that any information that could identify the complainant shall not be published, broadcast or transmitted in any way.

**Recommendations**

[3] This was a contested sentencing hearing. The Crown asks the Court to impose a three- to- four-year sentence of incarceration. The prosecution submits that the Court must make an order pursuant to the *Sex Offender Information Registration Act* (SOIRA), and seeks additional ancillary orders including DNA collection and a section 161 order of prohibition. In the event the Court determines a sentence less than two years' jail is appropriate, the prosecution requests that a Probation Order be part of the disposition.

[4] The Defence recommends a sentence of two years' less a day imprisonment, to be served in the community under the conditions of a Conditional Sentence Order. Defence counsel agrees with the ancillary orders requested by the Crown Attorney.

**Analysis**

[5] There is a victim-impact statement per s. 722 before the Court, which the prosecution read into the record of proceedings. There is a Pre-Sentence Report, which I have considered. My task is to formulate a "fair, fit and principled sanction", that is individualized to D.C., that considers parity, and that in the ultimate analysis is proportionate, reflecting the gravity of the offence, the offender's degree of responsibility and the unique circumstances of this case. (*R. v. Parranto*, 2021 SCC 46; *R. v. Lacasse*, 2015 SCC 64).

*Circumstances of the Offences*

[6] J.M. was a university student at the time of trial; D.C. is her biological father. The events that gave rise to this offence happened when she was a child residing in […] Nova Scotia, with her father and her paternal grandmother. They lived in a small two-story house with two bedrooms upstairs, and a downstairs room that was converted into a bedroom. The subject events occurred between 1 January 2008 and 1 January 2014. Findings of fact were made that D.C. showered with J.M. until she was 10 or 11 years old; that he applied nivea cream in and on her vagina up to the age of 10 or 11 years old; that he shaved J.M.'s pubic region when she was about age 10 or 11 years. The determination at trial was that D.C. was not protecting the sexual autonomy of his pubescent daughter by engaging in this conduct - the incidents of shaving her pubic hair and applying cream to her

vagina constituted an objective violation of J.M.'s sexual integrity. The general intent offence was proven on the criminal standard, with the finding that D.C. intentionally touched J.M., setting out to shave her pubic hair, and putting cream on her vagina when she exited the shower while confirming that she was old enough to be doing it herself.

*Circumstances of D.C.*

[7] D.C. has a solitary lifestyle. He left home at age 24 and maintained a relationship with a girlfriend, with whom he cohabited for five years, the relationship producing his one biological child. Upon the end of that relationship, D.C. returned to live with his mother, where he remained until her death in 2019, and subsequently for a few years until the family home was sold in 2022. D.C. now resides with his brother and family. He has been single for 18 years. D.C. offers in his Pre-Sentence Report that he had a good upbringing, is close with his family, performed well during his secondary schooling, and is currently employed as a "top trucker" with the company for which he drives. He reports no mental or physical conditions or challenges. At 51 years of age, he is an offender for the first time. D.C. acknowledged that had he known the conduct was illegal, he "would not have done it". Family members were present in a supporting capacity at the sentencing hearing.

*Application of Purpose, Principles and Objectives of Sentencing*

[8] I must consider and apply the objectives, purpose and principles of sentencing set out in ss. 718 through 718.2 of the *Criminal Code*. Again, the fundamental principle is proportionality, both to the gravity of the offence and degree of responsibility of the offender. Individualized sentencing is central to that

process of achieving proportionality. (*R. v. Parranto, supra*, ¶ 12, *R. v. LaCasse, supra*, ¶ 58; *R. v. Friesen*, 2020 SCC 9).

[9] The purpose of sentencing legislated in section 718 is to protect the public and contribute to respect for the law and the maintenance of a safe society. That purpose is to be effected by the imposition of just sanctions that have one or more of the following objectives: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; reparations; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community. *R. v. Nasogaluak*, 2010 SCC 6, ¶ 39.

Submissions of Counsel

[10] The prosecution submits that a mid-range penitentiary term is essential to satisfy the fundamental principle of proportionality, emphasizing the profound harm to children, families and communities that attends sexual offences against children (*R. v. Friesen, supra*, ¶ 5). Ms. Gerrard references the statutory objective in s. 718.01, indeed applicable here, that the Court must give primary consideration to denunciation and deterrence in sentencing offenders for offences involving abuse of a person under the age of 18 years. Furthermore, this is a statutorily aggravating factor per s. 718.2(a)(ii.1), reflecting Parliament's intent to address the impact of violent offences against children.

[11] The Crown Attorney in her submissions references the key edicts of *Friesen*, directing courts to focus on the psychological, emotional and physical harm visited upon children (¶ 51), the relational destruction and costs of intervention (¶ 60-64), the increased reflection that courts must engage in vis-à-vis the gravity of the offence, addressing the inherent wrongfulness of sexual offences against children and the extent of consequential harm that results (¶ 76-78).

[12] I agree with the prosecution that the facts established at trial, with a 10-11-year-old victim, and an offender who is her biological father and was her sole caregiver, highlights the vulnerability and level of breach of trust that characterizes this offence. It engages the principles legislated in section 718.2(a)(ii) - abuse of a family member, 718.2(a)(ii.1) - abuse of a person under the age of 18 years, 718.2(a)(iii) - abuse of a position of trust or authority in relation to the victim, and 718.2(a)(iii.1) – having a significant impact on the victim. The governing jurisprudence also reminds courts that sexual abuse that occurs in the home is aggravating (*R. v. Friesen, supra*, ¶ 178).

[13] As courts must refrain from inappropriate behavioural assumptions when trying sexual assault cases involving children (*R. v. WJM*, 2018 NSCA 54) and otherwise (*R. v. Darrach*, 2000 SCC 46; *R. v. DD*, 2000 SCC 43; *R. v. ARJD*, 2018 SCC 6), they must also decline to rely on stereotypes when assessing offenders' degree of responsibility in sentencing cases involving sexual violence against children (*Friesen, supra*, ¶ 87). As noted by the prosecution, there is no evidence before this Court of mental or cognitive capacity issues that would reduce moral culpability[1]. Ms. Gerrard further submits that the PSR does not disclose remorse by the offender, which, while not aggravating, in her submission cannot be counted as a mitigating factor from which D.C. should benefit.[2] D.C. maintains his innocence, which is not an aggravating factor; rather, it is the absence of a mitigating factor and may be seen as diminishing the prospects of rehabilitation (*R. v. G.*, 2023 NSSC 304 at ¶ 39).

[14] The prosecution asks the Court to particularly heed the guidance of *Friesen* at paragraphs 107 to 118; namely, that an upward departure from prior sentencing

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[1] *R. v. Scott*, 2021 NSPC 42.
[2] *R. v. Cormier*, 140 CCC (3d) 87) (NBCA).

norms may be required to achieve proportionality, and that sexual offences against children should generally be punished more severely than those against adults. To that end, the Crown references the characterization of the parent-child relationship in *R. v. Magoon*, 2018 SCC 14 - that children are inherently vulnerable and dependent, and moreover, that in assessing gravity of the offence, courts have departed from a categorization of sex assaults as penetrative or not. The Crown emphasizes: the paramountcy of long-term protection of the public; that rehabilitation is secondary to denunciation and deterrence, particularly given the application of s. 718.01; the aggravating feature of abuse of a position of trust; and asks the Court to give mind to the duration and frequency of the offence, with a view to addressing the full cumulative impact of the gravity of the crime (*Friesen, supra*, ¶ 133).

[15] Defence counsel acknowledges that the legislation and the jurisprudence require the objectives of denunciation and deterrence to be given primary consideration in offences involving violence against children. Mr. Kidston's submission, in its essence, is that the Court must take care to ensure those objectives do not thwart the Court's duty to be guided by the cardinal principle of proportionality in crafting a fit sentence. The Defence argues that context is important – there was a finding of violation of J.M's sexual integrity, but that does not require a sexual purpose or motive, and Defence counsel asks the Court to consider that in formulating sentence. What I take from this argument is that the Court must ensure the sentence is individualized to D.C.'s circumstance. D.C. is being sentenced for the general intent offence of sexual assault; there is indeed no specific intent. I must sentence in accordance with the gravity of that offence for which D.C. was tried and convicted, and I must evaluate his degree of moral blameworthiness. The Defence highlights that D.C. admitted to shaving the pubic

hair of the victim but there was no admission and no finding on the criminal standard that the conduct was for his own sexual gratification, and that this is a significant distinguishing factor from much of the jurisprudence offered by the prosecution. The Defence asks the Court to consider this when assessing the degree of responsibility of D.C.

[16] Defence submits that a Conditional Sentence Order is available, and that denunciation and deterrence would be suitably reflected in the service of a two-year less one day jail sentence in the community.

Parity/Range of sentences

[17] Counsel have provided jurisprudence to specifically comment on the appropriate range of sentence.

[18] The prosecution offers the case of *R. v. B.J.R.*, 2021 NSSC 26. The offender in that case entered a guilty plea to section 271; the victim was his 16-year-old stepdaughter. The offender removed her shorts and put his mouth on her vagina. It was his first criminal conviction, and he expressed remorse, but did not pursue rehabilitative programming. The Court imposed a sentence of three years' imprisonment and ancillary orders.

[19] The Crown submitted *R. v. C.A.L.*, 2021 NSSC 365, in which C.A.L. was tried and found guilty of sexual assault and sexual interference. The section 271 count was stayed in accordance with the rule against multiple convictions. The victim was nine years old, and the offender was a close family friend, who, a few times a month, would engage in sexual violence by grabbing her buttocks, kissing her, putting his hands down her pants. The conduct occurred over a period of four years. The sentence was a term of imprisonment for three years and six months.

[20] In recommending an appropriate range of sentence, the Crown Attorney provided the case of *R. v. C.M.S.*, 2022 NSSC 166. The victim was a 13-year-old Indigenous female. The offender was found guilty of offences contrary to sections 271 and 151 after a jury trial; a judicial stay was recorded on the sexual assault, and C.M.S. was sentenced on the section 151 count. The conduct involved kissing her neck, stomach, hips, inviting her to reciprocate, and rubbing her vagina over and under her clothes. There was a two-year sentence of incarceration ordered with three years' probation.

[21] The prosecution relies on *R. v. T.J.*, 2021 ONCA 392. This involved a sentence appeal of a nine-month custodial sentence and two years' probation for a section 271 conviction. The victim was six or seven years old. The offender directed her into the bathroom, took her hands and placed them on his penis, used them to rub his penis, which became aroused. This went on for several minutes; the offender then told C.M that she could put her mouth on his penis. She pulled away and left the room. The ONCA allowed the appeal, and substituted a sentence of incarceration of 24 months.

[22] The Crown Attorney also referenced *R. v. C.S.*, 2023 NSPC 34, in which Judge Michie imposed a seven-year custodial sentence for sexual interference involving multiple occasions of vaginal penetration. Counsel noted the utility of the included chart in paragraphs 68-69, listing a series of cases, with sentences imposed for sexual abuse of a child ranging from 56 months to nine years. All involved convictions to section 151 or 152 counts.

[23] Defence counsel submitted the case of *R. v. B.J.T.*, 2019 ONCA 694. As in this case, *B.J.T.* involved a father shaving his daughter's pubic hair. This occurred when she was 13 and then 15 years old. He was told it was not appropriate, and he

had instructed his daughter never to tell anyone. He applied cream to her vagina, and the trial court found there was no instance where a father could apply cream to his pre-teen or teenaged daughter's vagina, stating: "objectively, it would make no sense with a plethora of alternative solutions available to resolve this personal care need". The Court of Appeal upheld the trial judge's findings of sexual assault on this evidence. The trial court also convicted B.J.T for sexual interference, and the basis for the conviction included B.J.T.'s comment about the size of his daughter's clitoris and reaching in her vagina to pluck a pubic hair. The trial judge stated that these two factors "denote an additional sexual purpose…" A nine-month sentence of incarceration for the sexual interference count was upheld by the Court of Appeal.

[24] I found these cases to be most helpful. That said, not all map closely onto the circumstance of D.C. Most involved convictions for sexual interference, invitation to sexual touching or sexual exploitation. *R. v. B.J.T.*, while involving strikingly similar facts, was decided before the Supreme Court revised upward the sentencing ranges for child sexual abuse in *R. v. Friesen*.

[25] I consider *R. v. T.J.* to be a closer comparator to this one. Both cases involve a s. 271 conviction. Neither offenders have a criminal history. Both have a longstanding history of productive employment. They vary in some respects; the child in *T.J.* was approximately four years younger than the victim in this case. The offences occurred on one occasion in *T.J.*; not so in this case. The offender in *T.J.* was a close family friend; in this case the abuse of trust was in my view of the most extreme sort, being the father and sole caregiver of the child.

<u>Application of section 271(a) Minimum Punishment</u>

[26] The constitutionality of the mandatory minimum punishments in sections 271(a) and (b) involving complainants under the age of 16 years has not been directly addressed by a Court that binds the Provincial Court in this Province. In *R. v. Bertrand Marchand*, 2023 SCC 26, the Supreme Court of Canada declared unconstitutional the mandatory minimum sentences for child luring offences legislated in sections 172.1(2)(a) and (b) per section 12 *Charter*[3]. The constitutional infirmity of certain firearms provisions of the *Criminal Code* and of designated substance offences in the *Controlled Drugs and Substances Act* was determined in *R. v. Nur*, 2015 SCC 15 and *R. v. Lloyd*, 2016 SCC 13.

[27] Our Court of Appeal in *R. v. Hood*, 2018 NSCA 18, declared the mandatory one-year minimum sentences for sexual exploitation, sexual interference and luring to be struck and rendered inoperative.

[28] In *R. v. DeYoung*, 2016 NSPC 67, Judge Atwood found the mandatory minimum sentence in section 271(a) of the *Criminal Code*, for sexual assault of a person under the age of 16 years, an infringement of that offender's right not to be subjected to cruel or unusual punishment under s. 12 of the *Charter*, and not saved by section 1. A sentence appeal was later dismissed in a decision that did not address the constitutionality of the one-year mandatory minimum penalty: 2017 NSCA 13).

[29] In *R. v. Lafferty*, 2020 NWTSC 4, the Supreme Court of the Northwest Territories ruled on a challenge to the minimum punishment, and concluded that section 271(a) contravenes section 12 of the *Charter*, and declared the impugned words in the section to be of no force and effect pursuant to section 52(1) of the

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[3] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11(*Charter*)

*Constitution Act*, 1982. The British Columbia Supreme Court found similarly in *R. v. E.R.D.R.*, 2016 BCSC 684, as did the Newfoundland Supreme Court in *R. v. MacLean*, 2018 NLSC 209.

[30] *R. v. S.P.P*, 2024 NSSC 42 was a summary conviction appeal addressing the imposition of sentence for sexual assault and child luring offences, and specifically whether the preconditions for a CSO were present, but did not address the constitutionality of the mandatory minimum punishment in the sexual assault provisions of the *Criminal Code.*

[31] Counsel did not argue this issue. The Court has not been asked to grant *Charter* relief. It stands to reason that the analysis of our Court of Appeal, and indeed that of the Supreme Court of Canada, as it relates to the constitutionality of mandatory minimum punishments in cases of sexual interference, sexual exploitation and child luring applies equally to the mandatory minimums in section 271. However, without the minimum punishment provision in section 271(a) having been struck by our Court of Appeal, I am of the view that a request for s. 12 *Charter* relief to address the constitutionality of the mandatory minimum should have been brought, as the existence of a minimum punishment excludes the imposition of a CSO as an available sentence pursuant to section 742.1(b).

[32] However, there are examples in other jurisdictions where Courts have taken the view that there was no mandatory minimum penalty in effect notwithstanding that there had been no constitutional challenge brought to section 271 CC. *R. v. John*, 2020 ONSC 5171 is one such case.[4] Therefore, in the event D.C. is not

[4] See *R. v. John*, footnote 2; the Crown took the position that the Court should proceed on the basis that there is no mandatory minimum sentence, notwithstanding that no constitutional challenge was brought to s. 271 of the *Code* by Mr. John.

statutorily disqualified from a CSO in virtue of the mandatory minimum, I will address the issue of whether it is an appropriate sentence.

Conditional Sentence Order Analysis

[33] Defence counsel argues the Court should impose the least restrictive sanction available in the circumstances, for a first-time offender who is fully employed, who he argues is less morally blameworthy than other offenders convicted of sexual offences against children due to the absence of a finding of a sexual motive. The Defence submits this all supports the imposition of a sanction that is minimally restrictive.

[34] I must consider whether a conditional sentence could be crafted that would constitute a fit and principled sanction for D.C. If the sentence is legally available, the Court must be of the view that less than two years' jail is appropriate – and, in accordance with the test in *R. v. Proulx*, that service in community would not endanger the public safety and would be consistent with the fundamental purpose and principles of sentencing. There are a collection of principles that derive from *Proulx*, and that this Court must consider in its evaluation of whether a CSO is a fit and proper sentence for D.C.

[35] The decision-making process involves two tranches - the first stage is limited to the consideration of whether to exclude a penitentiary term or a non-custodial term. In making this determination, the judge need only consider the fundamental purpose and principles of sentencing to the extent necessary to narrow the range. At the second stage of the analysis, the judge must consider the principles of sentencing in a more comprehensive fashion.

[36] A conditional sentence is available for all offences in which the statutory prerequisites are fulfilled; there is no presumption of inappropriateness for specific offences; nevertheless, gravity of the offence is clearly relevant in the determination. Conditional sentences can also provide significant deterrence, and judges must be wary of overemphasis on deterrence when choosing between the two sentencing options; nevertheless, in some cases, the need for deterrence may warrant incarceration.

[37] At the first stage of the *Proulx* analysis, I must determine whether a sentence of less than two years is appropriate. To do this, I reflect first on the circumstances of this offence, I look to the personal circumstance of D.C., and evaluate that in the context of comparable jurisprudence. The Crown recommendation is three to four years of imprisonment. In the cases provided by the prosecution to assist the Court in assessing the appropriate range of sentence for similar offenders who have committed similar offences, the sentences imposed ranged from two to seven years' imprisonment. Many of these cases involved sexual interference or invitation to sexual touching convictions. The case of *B.J.T.*, *supra*, offered by the defence, has markedly similar facts to this one, and a term of nine months in jail was upheld by the Court of Appeal; however, it was decided prior to *R. v. Friesen*. Considering the range of sentences imposed for like offences, the legislatively aggravating factors applicable, the requirement of courts to give primacy to denunciation and deterrence in sentencing offenders for offences involving abuse of children, and also considering D.C.'s lack of criminal antecedents, I am satisfied, in this particular case, that a sentence at about the two-year mark is appropriate. In making this determination, as per the direction in *Proulx*, I need only consider the fundamental purpose and principles of sentencing to the extent necessary to narrow the range. The distinction between two years in jail and two

years less one day is trifling; therefore, I will proceed to the second stage of the analysis.

[38] At the second phase of the evaluation, the Court must consider the principles of sentencing more extensively. It is at this stage that I must consider whether service in community would not endanger the public safety and would be consistent with the fundamental purpose and principles of sentencing.

[39] In this regard, I consider the application of principles that I have canvassed earlier in these reasons. The public good demands that sexual violence against children be categorically denounced, and general deterrence must feature prominently in the assessment. This is reinforced by the statutory objective in s. 718.01, giving primacy to denunciation and deterrence, and again in s. 718.2(a)(ii.1), reflecting Parliament's intent to deem abuse of children statutorily aggravating.

[40] Indeed, as addressed earlier in these reasons, there are four statutorily aggravating factors applicable here: abuse of D.C.'s family member [718.2(a)(ii)] who is under the age of 18 years [718.2(a)(ii.1)], with whom, as the victim's father and caregiver, he is in a position of trust or authority [718.2(a)(iii)], and whose actions visited a significant impact upon the victim [718.2(a)(iii.1)].

[41] With respect to victim impact, the Supreme Court has noted that the best evidence of the harm that the victim has suffered is to be found in the Victim Impact Statement (VIS) (*R. v. Friesen*, *supra*, ¶ 85). The prosecution read the VIS into the record of proceedings, and the material was considered in accordance with the provisions of section 722. J.M. detailed how she would, by times, stop eating to the point of requiring hospitalization, that she is continuing to experience trust issues, that she endured nightmares about her childhood, that she regularly flinches

when someone touches her. The victim reports she became suicidal, developed agoraphobia, and withdrew from university for a time. The victim has experienced extensive physical and emotional loss.

[42] There are two additional considerations that are front of my mind when evaluating whether service of a jail sentence in the community would endanger the public safety. The first is the reminder by the Supreme Court that sexual violence that takes place in the home is particularly damaging (*Friesen, supra*, ¶ 178, citing *R. v. M.J.*, 2016 ONSC 2769 (QL), at ¶ 31). The second is the Court's direction that sexual offences against children should generally be punished more severely than those against adults, with attention to the duration and frequency of the offence - this was not a one-time occurrence. With regard to the age of the victim, increased moral blameworthiness is assigned to offenders victimizing younger children - J.M was 10-11 years old (*Friesen, supra*, ¶ 130-135).

[43] There are some circumstances where the need for deterrence calls for a carceral sentence. I cannot see my way to the imposition of a community-based sentence for an offence that involves sexual assault of the offender's 10-11-year-old daughter with a collection of aggravating factors, statutory and otherwise. The public is exposed to a degree that warrants a more deterrent effect (See *R. v. E.M.W.*, 2011 NSCA 87). A sentence of incarceration will be imposed.

Sentence Length

[44] In determining the length of custody, I need to focus on proportionality, which requires an individualized approach, and must suitably reflect the gravity of the offence and D.C.'s degree of moral responsibility. In doing so, the message of general deterrence cannot be overstated. In short, the consequence must fit the crime. Defence counsel asks me to remain sighted on proportionality; the

punishment imposed must be "just and appropriate…and nothing more" (*R. v. Friesen, supra*.[5]

[45] The public expects that restraint be exercised by Courts in all cases, not just in those cases that are less serious and less offensive to the public conscience; the deprivation of liberty must always be cautiously employed.

[46] With respect to seriousness, considering the circumstances of the offence as detailed earlier, I agree with the prosecution that the public expects that an offence involving the sexual abuse of a child demands a sentencing focus on specific and general deterrence. This is markedly so when prosecuted by Indictment, attendant to it is a maximum penalty of 14 years' incarceration. I consider it exacerbated by the fact that the offences occurred in the home, and by the victim's father and sole caregiver. With respect to gravity, I consider, as I must, that the offence occurred over a period of years, which increases its aggregate impact. (*Friesen, supra,* ¶ 133). I characterize seriousness at the middle of the range of s. 271 cases involving children.

[47] This Court takes into account, in formulating a just sentence, that D.C. comes before the Court for the first time at age 51; this weighs in his favour in assessing his candidacy for rehabilitation. I consider this in crafting a fit sentence that is proportionate to the gravity of the offence and the degree of moral responsibility of the offender (*R. v. Wournell*, 2023 NSCA 53, ¶ 68), and particularly D.C.'s moral culpability. This case is considerably different from other cases considered by our Court of Appeal.[6] In *R. v. R.B.B., supra*, the offence was

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[5] *R. v. Friesen*, ¶ 91, citing *R. v. M.(C.A.),* [1996] 1 S.C.R. 500, at ¶ 80). See also, *R. v. Lacasse, supra,* as well as *R. v. Hamilton* (2004) 186 CCC (3d) 129 (ONCA).

[6] *R. v. R.B.B.,* 2024 NSCA 17. See also: *R. v. R.B.W.,* 2023 NSCA 5, for a discussion of these principles by our Court of Appeal involving an adult victim, a section 155 conviction, and IRCA application.

child luring, the victim was a 14-year-old-girl, and the facts involved communication over the internet, which progressed to exposure of genitals of both parties that transpired over two weeks and stopped at the instance of the victim. The offender was her 42-year-old step-uncle.

[48] Those facts bear little similarity to this case, and in my view the facts in this case are significantly more serious. As Scanlan J.A. remarked in *R. v. R.B.B.*, *supra*, at paragraph 39, "there is not a single road map confining sentencing judges to a defined path of reasoning in such cases". Here, there is an abuse of trust of the highest order, involving a father and his daughter, which warrants a lengthier sentence. The offence was committed over years and on multiple occasions, which attracts a higher sanction. I return to the guidance of the Supreme Court that the requirement for individualization excludes binding or inflexible rules, but the message remains that "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" (*R. v. Friesen, supra,* para. 114).

[49] The warrant of committal will be for a term of 24 months.

[50] In accordance with section 731(1)(b), probation is a legal disposition following a term of imprisonment that does not exceed two years. There will be a two-year period of probation to follow the sentence of incarceration.

[51] You shall, upon expiration of the sentence of imprisonment imposed on you for the period of 24 months, comply with the following terms and conditions: keep the peace and be of good behaviour; appear before the court when required to do so by the court; notify the court, probation officer or supervisor, in advance, of any change of name, address, employment or occupation. In addition, report to a

probation officer at 277 Pleasant St. within three days of the date of expiration of your sentence of imprisonment and thereafter as directed; you are not to have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance. The Order includes a condition to engage in assessment and counselling as directed by probation, including to engage with the Provincial Forensic Sexual Behaviour Program, to attend for assessment, counselling or programming as directed and to participate in and cooperate with any assessment, counselling or programming as directed by your probation officer.

*Ancillary Orders*

[52] A primary designated DNA collection Order issues per subsections 487.04 and 487.051.

[53] A weapons prohibition was not sought; however, I am of the view that a 10-year weapons prohibition and a lifetime restricted or prohibited weapons prohibition applies by operation of law, and the same is ordered per section 109(2).

[54] Section 271 is a designated offence per s. 490.011(1)(a). An Order to comply with the *Sex Offender Information Registration Act*, SC 2004, c. 10 issues per section 490.012(1). The duration of the Order is 20 years per s. 490.013(1)(b).

[55] The prosecution seeks a Prohibition Order per section 161 and the defence agrees. Neither counsel offered recommendations on the scope or duration of the Order. In its imposition, I consider the age of the offender, the evidentiary basis that his unsupervised contact with children poses a risk, taken from the evidence led at trial, to determine that a prohibition pursuant to subsections 161(1)(a), (a.1) and (b) is an appropriate scope. There is limited information in pre-sentence

documentation or submissions that is helpful in the assessment of the nature and extent of the risk to re-offend. Considering the information available to me after hearing the trial and sentencing, and the pool of potential victims, I conclude that a 10-year duration is fit, and sufficiently restrained to serve its sentencing purpose (*R. v. R.J.H*. (2021), 402 C.C.C. (3d) 568 (BCCA); *R. v. Hagen* (2021), 405 C.C.C. (3d) 211 (BCCA).

[56] D.C. has maintained steady employment to date. He has the ability to pay a victim surcharge, and one will issue per section 737(2)(b)(ii), for the minimum prescribed amount of $200. His employment circumstances will change presently, and he is permitted 24 months to pay the surcharge amount.

[57] Thank you very much, counsel.

Bronwyn Duffy, JPC