**PROVINCIAL COURT OF NOVA SCOTIA**
**Citation:** *R. v. Fidgen*, 2026 NSPC 14

**Date:** 20260116
**Docket:** 8916312, 8916313
**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

Cole Fidgen

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Restriction on Publication: *Criminal Code* s. 486.4 Any information that could identify the complainant shall not be published in any document or broadcast or transmitted in any way.**

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** December 12, 2025, in Dartmouth, Nova Scotia

**Decision:** March 16, 2026

**Charge:** Sections 151, 271, 129 and 733.1(1) of the *Criminal Code*, RSC 1985, c C-46

**Counsel:** Michael Blanchard, for the Crown
Drew Rogers, for the Accused

**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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 162.1, 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).

**Mandatory Order on Application**
486.4(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall
(a) as soon as feasible, inform any witness under the age of 18 years and the victim of the right to make an application for the order;
(b) on application made by the victim, the prosecutor or any such witness, make the order.

**Victim Under 18 — Other Offences**
486.4 (2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

**Mandatory Order on Application**
486.4 (2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

> (a) as soon as feasible, inform the victim of their right to make an application for the order;

(b) on application of the victim or the prosecutor, make the order.

**Child Sexual Abuse and Exploitation Material**
486.4(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes "child sexual abuse and exploitation material" within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

**486.4(5) Limitation — victim or witness**
An order made under this section does not apply in respect of the disclosure of information by the victim or witness when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness.

**By the Court:**

[1] This is the sentencing decision respecting Cole Fidgen who was charged with the following offences under the *Criminal Code*, RSC 1985, c C-46 [the *Criminal Code*]:

> 1. For a sexual purpose touch I.G., a person under the age of 16 years directly with the part of his body, to wit, his hand, contrary to section 151; and
>
> 2. That he at the same time and place aforesaid, did unlawfully commit a sexual assault on I. G., contrary to section 271; and
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> 3. That he at the same time and place aforesaid, did unlawfully and willfully resist Constable James Anderson, a peace officer, while engaged in the lawful execution of his duty, contrary to section 129 (a); and
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> 4. That he at the same time and place aforesaid, while bound by a Probation Order issued on the 24th day of January 2025, did wilfully fail without reasonable excuse to comply with such order, to wit, "keep the peace and be of good behaviour", contrary to section 733.1 (1).

[2] On the day of trial, Mr. Fidgen entered guilty pleas on the third and fourth charges, specifically resisting arrest and breach of probation. After the trial, he was found guilty of the first two charges of sexual interference and sexual assault.

[3] Consistent with the *Kienapple* principle, the Crown recommended a stay be entered on count 2, that of sexual assault, and the court entered that stay.

**Summary of the Evidence**

[4] The evidence in summary is that video recordings show the victim, who was 10 years old at the time, entered a Winner's store in Dartmouth with her mother and brother on the day in question.

[5] Shortly after, Mr. Fidgen entered the store and began observing the victim as he moved about the store. Ultimately, the victim left her mother and headed to the toy area of the store with her brother.

[6] Once the children entered the toy aisle and began looking at toys, Mr. Fidgen entered the same aisle approximately 30 seconds later and looked towards the victim. He walked past the victim and a few steps later stopped, removed his phone and appeared look at the phone.

[7] Mr. Fidgen next walked past the victim who had her back to him and was looking at toys. The aisle which they were located was wide enough for him to pass by her without touching her. Mr. Fidgen looks back at the victim and her brother from the end of the aisle.

[8] Mr. Fidgen then returned to the same aisle a few seconds later and walked by the victim. As he passed her, he extended his right hand and touched the victim's buttocks with the back of his right hand. After he passes her, the victim looked at him.

[9] Mr. Fidgen then left the area and fled from the store when the security officer and a police officer appeared from the security office and began pursuing him. He was arrested and returned to the store in handcuffs.

**Positions of the Parties**

[10] The Crown recommends the following sentence:

1. Three years incarceration for the section 151 offence of sexual interference;
2. Three months incarceration for the section 129(a) offence of resisting a peace officer, this sentence to run consecutive to the three-year term of imprisonment;
3. Three months incarceration for the section 733.1 (1) offence of a breach of Probation Order to run consecutive to the three-year term of imprisonment;
4. A DNA Order pursuant to section 47.04 of the *Criminal Code*;
5. A *Sex Offender Information Registration Act* (SOIRA) Order for life pursuant to s. 490.013(2)(b) of the *Criminal Code*;

6. A Weapons Prohibition Order for life pursuant to sections 109(1)(a) of the *Criminal Code*;

7. An Order prohibiting communication with the victim or her mother during the custodial period of the sentence pursuant to section 743.21 of the *Criminal Code*;

8. An order for 10 years pursuant to section 161(1)(a),(a1),(b) and (c) of the *Criminal Code*.

9. A Forfeiture Order for items seized consisting of two pocket knives and a iPhone pursuant to section 490(9)(d) of the *Criminal Code*.

[11] Defence recommends the following sentence:

1. A total period of incarceration of 15 months to 24 months less a day;

2. A Probation Order for three years;

3. Consent to the ancillary orders being sought by the Crown;

4. A waiver of the Victim Fine Surcharge based on undue hardship.

**Summary of the Law**

[12] As confirmed by the Supreme Court of Canada in the case of *R. v. Nasogaluak* 2010 SCC 6 at paragraphs 39 to 45, sentencing judges are required to consider s. 718 of the *Criminal Code*:

> [39] … Judges are now directed in s.718 to consider the fundamental purpose of sentencing as that of contributing, along with crime prevention measures, to "respect for the law and the maintenance of a just, peaceful and safe society". This purpose is met by the imposition of "just sanctions" that reflect the usual array of sentencing objectives, as set out in the same provision: denunciation, general and specific deterrence, separation of offenders, rehabilitation, reparation, and a recent addition: the promotion of a sense of responsibility in the offender and acknowledgement of the harm caused to the victim and to the community.

[13] During the course of these reasons, I firmly keep in mind the fundamental principle of sentencing set out in s. 718.1 which states that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[14] *R v Hamilton*, (2004) 186 CCC (3d) 129 (ONCA) also provides helpful guidance with respect to the cardinal principle of proportionality. The severity of a sanction for a crime should reflect the seriousness of the criminal conduct, while also accounting for the degree of the specific offender's culpability. A disproportionate punishment can never be a just sanction.

[15] Section 718.2 sets out other principles that the sentencing court is mandated to take into consideration, including aggravating and mitigating factors and the

principles of parity (a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances), totality, and restraint.

[16] The individualized nature of sentencing was nicely articulated by then Chief Justice Lamer in *R v CAM*, [1996] SCJ No 28 beginning at para 91:

> …The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offense, while at all times taking into account the needs and current conditions of and in the community...
>
> …It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime… Sentencing is an inherently individualized process and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offense should be expected to vary to some degree across various communities and regions of this country as the 'just and appropriate' mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred…

[17] As noted by our Court of Appeal in *R v EMW*, 2011 NSCA 87 at para 35, rehabilitation is a much greater consideration for a sentencing judge when the offender has accepted responsibility.

[18] I am also mindful of *R v Grady*, (1973) 5 NSR (2d) 264 (NSCA) where the Court confirmed that the primary focus was on the protection of the public and how best to achieve that whether through deterrence or rehabilitation, or both.

Protection of the public includes both protection of society from the particular offender as well as protection of society from this particular type of offence.

[19] In *R v Fifield*, [1978] NSJ 42 (CA), the Court also provided the following helpful guidance at para 11:

> We must constantly remind ourselves that sentencing to be an effective societal instrument must be flexible and imaginative. We must guard against using… the cookie cutter approach. …

[20] As these matters include a sexual offence involving a child , the decision in *R. v. Friesen*, 2020 SCC 9 is highly relevant as it reset the approach courts must take in the context of child sexual offences.

[21] In that decision, the Supreme Court of Canada provided new and specific guidance for sentencing for sexual offences involving children. They include, in brief form, the following:

1. The protection of vulnerable children is one of the most fundamental values of Canadian society (para 65);
2. Our society is diminished and degraded by this kind of sexual offending (para 64);
3. The harm resulting from these offences is profound and potentially lifelong (paras 55 to 64);
4. Sentences for this kind of offending must increase, reflecting Parliament's intention, and reflecting society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children (para 5);
5. There should be an upward departure for sentencing for these offences reflecting this change in understanding (paras, 100, 110); and

6. The principles of the denunciation and deterrence take precedence over all other sentencing principles (para 104);

[22] Since that decision, courts across Canada have adopted a stricter approach to sentencing for child sexual offenders. In doing so, courts recognize the unique and long-term harm of sexual violence against children and Parliament's prerogative to denounce and deter such conduct.

[23] In determining the degree of intrusiveness and impact on the victim, the Supreme Court in *R. v. Friesen supra*, provided cautionary instructions to address issues that persisted in previous case law as follows:

> [141] First, defining a sentencing range based on a specific type of sexual activity risks resurrecting at sentencing a distinction that Parliament has abolished in substantive criminal law. Specifically, attributing intrinsic significance to the occurrence or non-occurrence of penetrative or other sexual acts based on traditional notions of sexual propriety is inconsistent with Parliament's emphasis on sexual integrity in the reform of the sexual offences scheme….
>
> [142] Second, courts should not assume that there is any clear correlation between the type of physical act and the harm to the victim. …. Sexual violence that does not involve penetration is still "extremely serious" and can have a devastating effect on the victim …. This Court has recognized that "any sexual offence is serious" …, and has held that "even mild non-consensual touching of a sexual nature can have profound implications for the complainant" …. The modern understanding of sexual offences requires greater emphasis on these forms of psychological and emotional harm, rather than only on bodily integrity ….
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> …
>
> [144] Specifically, we would strongly caution courts against downgrading the wrongfulness of the offence or the harm to the victim where the sexually violent conduct does not involve penetration, fellatio, or cunnilingus, but instead touching or masturbation. There is no basis to assume, as some courts appear to have done, that sexual touching without penetration can be [TRANSLATION] "relatively benign" …. Some decisions also appear to justify a lower sentence by labeling the conduct as merely sexual touching without any analysis of the harm to the victim …. This is a myth that must be rejected …. Simply stating that the offence involved

> sexual touching rather than penetration does not provide any meaningful insight into the harm that the child suffered from the sexual violence.
>
> [145] Third, we would emphasize that courts must recognize the wrongfulness of sexual violence even in cases where the degree of physical interference is less pronounced. Of course, increases in the degree of physical interference increase the wrongfulness of the sexual violence. However, sexual violence against children remains inherently wrongful regardless of the degree of physical interference. Specifically, courts must recognize the violence and exploitation in any physical interference of a sexual nature with a child, regardless of whether penetration was involved ….
>
> [146] Fourth, it is an error to understand the degree of physical interference factor in terms of a type of hierarchy of physical acts….

[24] The decision of *R. v. Woodward*, 2011 ONCA 610 from the Ontario Court of Appeal well summarized the considerations most relevant to cases of child sexual abuse at paragraph 72 and 73 as follows:

> [72] …(1) Our children are our most valued and our most vulnerable assets. (2) We as a society owe it to our children to protect them from the harm caused by sexual predators. … (3) Throughout their formative years, children are very susceptible to being taken advantage of by adult sexual offenders and they make easy prey for such predators. (4) Adult sexual predators recognize that children are particularly vulnerable and they exploit this weakness to achieve their selfish ends, heedless of the dire consequences that can and often do follow. (5) Three such consequences are now well-recognized: (i) children often suffer immediate physical and psychological harm; (ii) children who have been sexually abused may never be able, as an adult, to form a loving, caring relationship with another adult; (iii) and children who have been sexually abused are prone to become abusers themselves when they reach adulthood. (6) Absent exceptional circumstances, in the case of adult predators, the objectives of sentencing commonly referred to as denunciation, general and specific deterrence and the need to separate offenders from society must take precedence over the other recognized objectives of sentencing.
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> [73] The foregoing concerns inform the fundamental message that D. (D.) sought to convey, at para. 45:
>
> > The harm occasioned [to children] by [adult sexual predators] is cause for grave concern. Children are robbed of their youth and innocence, families are often torn apart or rendered dysfunctional, lives are irretrievably damaged and sometimes permanently

> destroyed. Because of this, the message to such offenders must be clear -- prey upon innocent children and you will pay a heavy price!

**Victim Impact Statement**

[25] A Victim Impact Statement was filed by the mother of the victim in this matter. In it, she describes that her daughter has experienced significant emotional and psychological distress because of this incident. She has developed intense fear and anxiety, particularly related to public spaces. For two months after, she suffered frequent stomach pain and feelings of impending doom when near the location of the assault.

[26] Her daughter became afraid leave the home or to socialize without her mother present. In stores she will not leave her mother's side and will not reach for items unless they are directly beside her.

[27] Her daughter's view of her body has changed as well. She has become extremely self-conscious and wears oversized clothing, including T-shirts over her swimsuit. She is extremely aware of how she is perceived in public and no longer carries herself with the carefree nature of a child. She is nervous around strangers and more guarded around adults. She has difficulty trusting adults.

[28] The impact on her has been serious enough that her school counsellor contacted her mother out of concern for her well-being. She disclosed thoughts of

self-harm but denied any intent to act on them because she didn't want to hurt her mother. She has since obtained counselling support.

[29] The impact of this event has altered her daughter's life, affecting her confidence, her sense of security, trust in others, and her overall childhood experience.

**Pre-Sentence Report**

[30] A Pre-Sentence Report was prepared with respect to Mr. Fidgen. In it, he described having a difficult childhood, during which he was subjected to a great deal of mental abuse by his father and stepfather and occasional physical abuse by his father. His parents separated when three years old.

[31] He described being bullied when young and responded primarily through physical altercation. He described being active as a child, playing sports and being involved in martial arts.

[32] As an adult he maintained contact with his mother for some time but expressed "she wasn't there for me much" and had not spoken to his mother for the past nine months. His relationship with his father is strained and expressed that it’s best that he doesn't talk to him. He does not maintain a relationship with his sisters.

[33] He has experienced homelessness from time to time since he was 24 years old.

[34] Respecting education, he completed his Grade 12 and says he did well in a studies but was suspended on numerous occasions due to being bullied, and his response to same. He did attend two years of postsecondary education at Dalhousie University in the criminology program.

[35] He is currently unemployed due to being incarcerated. He does say he generally always held some type of employment with his longest being for three years.

[36] Mr. Fidgen said he was diagnosed with Autism Spectrum Disorder and he has experienced suicidal ideation since he was 14 years old. He believes he suffers from a personality disorder, but this is not diagnosed. He is prescribed various medications and is followed by the Social Worker at the institution where he is currently incarcerated.

[37] Regarding substance use, he said that he uses cannabis regularly to self medicate for his mental health issues. He said that "I've done almost every drug under the sun" and that he used cocaine regularly during his teenage years, starting when he was 14 years old.

[38] He admits that he has a temper and did attend anger management counselling when he was young.

[39] The Social Worker at The Central Nova Scotia Correctional Facility confirmed that she has worked with Mr. Fidgen and provided very positive comments respecting behavior and engagement at the facility.

[40] Mr. Fidgen accepts responsibility for the breach of probation and the resisting of peace officer charges but does not accept responsibility for the sexual offences. This, of course, is his right.

[41] Respecting his criminal record, there are two prior convictions of note including a conviction for sexual interference from June 21, 2023. This offence involved an 11-year-old girl and a touch of her buttocks with the back of his hand. This is almost identical in circumstance to the current offence for which has been found guilty.

[42] He has also been convicted of criminal harassment from an incident that occurred on June 22, 2023. In that matter, a young adult female in her early 20s was swimming in a park and Mr. Fidgen was walking a trail around the site. When she left in her vehicle he pursued her in his.

**Aggravating Factors**

[43] Aggravating factors in this matter include Mr. Fidgen's prior record. He has a recent conviction for the same offence. It is also aggravating that he has a prior record for criminal harassment involving a young woman. Both of these offences occurred in June 2023, and after serving the one year of custody, he committed the current offences before the court shortly after his release.

[44] It is aggravating that at the time of this these offences, he was bound by a Probation Order and an Order under section 161 of the *Criminal Code* and has pled guilty to the breach of the Probation Order in this matter.

[45] It is significantly aggravating that the victim was 10 years old at the time of the offences. It is further aggravating that Mr. Fidgen sought out the victim when she was isolated in the toy section of the store away from her mother, whom Mr. Fidgen knew she was with at the store.

[46] The impact on the victim is also significantly aggravating in this matter. Her mother clearly spoke on the long-term effects this sexual offence has had on her daughter and the risk to her that has resulted.

**Mitigating Factors**

[47] The sole mitigating factor in this matter is the circumstance of Mr. Fidgen's upbringing as reflected in the Pre-Sentence Report. He experienced abuse and

neglect as a child, has experienced homelessness from time to time as an adult, has been diagnosed with ASD and experiences suicidal ideation.

**Range of Sentence**

[48] In consideration of the principles of parity, I have reviewed the cases presented by counsel. The Crown referred the court to five cases which I shall summarize as follows:

- *R. v. McDonald*, 2023 NSPC 53 - The accused had unprotected intercourse with a 15-year-old victim on two occasions. The accused had another conviction for sexual contact with the different 15-year-old victim. The accused had a previous conviction for a sexual offence. The total sentence imposed was 5.5 years, consisting of 4 years for sexual touching of one victim, 1 year for sexual touching of another victim to be served consecutively and further time for breach of a probation order.
- *R. v. T.K.B.*, 2022 NSSC 150 – A 55-year-old accused with no prior record was sentenced for repetitive sexual touching of a minor over time. He was in a position of trust. The sentence imposed was 12 months in custody, followed by a probation order.

- *R. v. Buschemeyer*, 2021 ABQB 1008 - A 44-year-old accused with a related record for sexual offences touched two girls who were children of a recent partner. The touching included to the bare chest while the child was in bed, rubbing the leg of a child while seated at the table, pushing a child onto the bed and putting his hands on the upper shoulder and chest without consent. These offences occurred within 12 months of his release from custody following sentences for sexual offences. The accused experienced a traumatic life and a prior record for sexual offending. A sentence of 46 months custody was imposed for each of the two counts of sexual interference to run concurrent and consecutive to other charges.
- *R. v. Dupuis*, 2024 ABKB 697 – A 44-year-old accused groomed a six-year-old victim and touched her vagina under her clothes on six occasions. The accused had an intellectual impairment and a traumatic background. He had a previous conviction for a sexual offence against a child. The sentence imposed was 5 years incarceration.
- *R. v. P.R.J.*, 2023 BCCA 169 – A 44-year-old accused, the mother of the 8 year-old victim, engaged in two instances of sexual touching, one

involving penetration. There was no prior record. On appeal, the Court of Appeal overturned the trial decision on sentence and imposed three years of custody.

The Defence referred the court to three cases which I shall summarize as follows:

- *R. v. G.K.*, 2021 YKTC 17 - A 59-year-old accused hired the 17 year old victim. He approached the victim from behind, placed his hand on her stomach and began rubbing it. He kissed her neck from behind on two occasions. Later, the accused hugged the victim, kissed her two more times on the neck and she left. The sentence imposed for sexual touching was a 6 month Conditional Sentence Order followed by a Probation Order of two years.

- *R. v. Levins*, 2024 BCSC 1387 - A 53-year-old accused was convicted of sexual interference which involved one incident of sexual touching when the victim was asleep. The victim felt something touching their buttocks over their clothing. When they turned over, the accused put his hand under their clothing and inserted his finger into their vagina. The accused was experiencing significant personal stress due to separation from his wife and children, and experienced homelessness and some

mental health challenges. The sentence imposed was a period of 3 years incarceration.

- *R. v. E.F.*, 2021 ABQB 639 - A 50-year-old accused was convicted of sexual interference involving his 14-year-old daughter. He pinned his daughter's hands above her head as she was lying on her back on a couch, lifted her shirt, touched her breasts and squeezed her nipples. This was a position of trust. The accused had a prior dated and unrelated record. The sentence imposed was 24 months incarceration.

**Analysis and Decision**

[49] This was a serious sexual offence committed by an adult against a minor. The seriousness of the offense is not dictated by the act engaged in by Mr. Fidgen, but rather the impact it is had on the victim and her family.

[50] Section 718.01 of the *Criminal Code* makes clear that "[w]hen 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." That direction, combined with the clear instruction in *R. v. Friesen, supra*, and *R. v. Woodward supra*, distinguish this from other types of sexual offences involving adults.

[51] The immediate and long-term harm suffered by children in such circumstances as identified in those decisions is mirrored in the Victim Impact Statement in this matter. The victim's mother identifies clear and ongoing emotional and psychological issues for this child that have changed her behaviours respecting her own dress, interaction with the world, her personality, and her ability to trust adults. This, in short, is precisely the concern the jurisprudence instruct us must be reflected in consideration of a sentencing in a matter such as this.

[52] When taking into account the principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, I find the gravity of this offence to be high for the reasons noted earlier. I also find that the degree of responsibility of Mr. Fidgen to be high as well. He followed the victim through the store and executed a plan to touch her buttocks. He would clearly be aware that she was a child.

[53] His responsibility and moral culpability are also high because of his prior record, including a nearly identical offence involving a young girl which resulted in a term of imprisonment. On his release, he committed this offence within a short time, indicating that the prior sentence had no impact on his behaviour.

[54] When considering the other sentencing principles in section 718.2 of the *Criminal Code*, I first note that there are significant aggravating circumstances identified earlier in this decision and only one mitigating factor of the background of Mr. Fidgen. I find that the aggravating factors significantly outweigh the mitigating factor, particularly when I take into account section 718.2 (a) (ii.1) of the *Criminal Code*, which requires consideration of the fact that the victim was under the age of 18 years.

[55] Considering the principle of parity (that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances), I turn to the range of sentences discussed in this decision as presented by counsel. I find that range to be 1 to 5 years incarceration. The decisions that are most similar to this circumstance are *R. v. Leavens supra*, *R. v. Dupui, supra, R. v. Buschemeyer supra*, *R. v. P.R.J. supra* and *R. v. McDonald supra.*

[56] When considering the principle that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances, I find that no other sanction would be appropriate in this matter. This is particularly so in light of the decision in *R. v. Friesen supra* and the fact that Mr. Fidgen has a prior record for a nearly identical offence.

[57] Finally, when considering section 718 of the *Criminal Code* which identifies the fundamental purpose of sentencing, I find that the principles of denunciation and deterrence are primary for the court's consideration in this matter, consistent with the *Criminal Code* and the jurisprudence noted earlier. His committing this offense shortly after being released after a period of incarceration for a very similar offence indicates to the court that, at least at this time, his prospects for rehabilitation are minimal.

**Sentence**

[58] I therefore sentence Cole Fidgen as follows:

1. Three years incarceration for the section 151 offence of sexual interference;
2. Three months incarceration for the section 129(a) offence of resisting a peace officer, this sentence to run concurrent to the three-year term of imprisonment;
3. Three months incarceration for the section 733.1 (1) offence of a breach of Probation Order to run concurrent to the three-year term of imprisonment.

[59] Mr. Fidgen will receive enhance credit for his pre-trial detention. He has been in detention for 334 days and will receive 501 days of enhanced credit. His total sentence of 3 years totals 1,095 days and with the enhanced credit of 501 days, he will serve a further 594 days (1095-501=594).

[60] I will also grant the following ancillary orders:

1. A DNA order pursuant to section 47.04 of the *Criminal Code*;
2. A *Sex Offender Information Registration Act* (SOIRA) Order for life pursuant to s. 490.013(2)(b) of the *Criminal Code*;
3. A Weapons Prohibition Order for life pursuant to section 109(1)(a) of the *Criminal Code*;
4. An Order prohibiting communication with the victim or her mother during the custodial period of the sentence pursuant to section 743.21 of the *Criminal Code*;
5. An Order for 10 years pursuant to section 161(1)(a),(a1),(b) and (c) of the *Criminal Code*.
6. A Forfeiture Order for items seized consisting of two pocket knives and a iPhone pursuant to section 490(9)(d) of the *Criminal Code*.

7. The Victim Fine Surcharge will be waived as Mr. Fidgen will be incarcerated and it would be an undue hardship to impose this order on him.

Timothy G. Daley, JPC