<u>SUPREME COURT OF NOVA SCOTIA</u>
Citation: *R. v. Hughes*, 2020 NSSC 376

Date: 20201222
Docket: Hfx No. 468574
Registry: Halifax

Between:

Her Majesty the Queen

v.

Trueman Roland Hughes

Restriction on Publication: s.486.4, s.486.5, and s.539(1)

DECISION ON SENTENCING

Judge:	The Honourable Justice Joshua Arnold
Heard:	September 24, 2020 and December 16, 2020, in Halifax, Nova Scotia
Counsel:	Matthew Kennedy, for the Crown Johnathan Hughes, for Trueman Hughes

Overview

[1] D.B. was a young, vulnerable, Indigenous person, living in a foster care-like environment, when Trueman Roland Hughes entered his life. Between 2002 and 2013, Mr. Hughes befriended D.B. and eventually acted as his caregiver during holidays and a number of summer vacations, until D.B. was approximately twelve years old. Mr. Hughes was in his early to mid-sixties during the relevant time period and had repeated sexual contact with D.B., including oral sex and anal sex.

[2] D.B. was 18 years old at trial. Mr. Hughes is now 71 years of age.

[3] The Crown seeks a prison sentence of six to seven years. Mr. Hughes says three years' probation with no time in custody is an appropriate sentence.

Facts

[4] Mr. Hughes was convicted following trial. The facts are detailed in *R. v. Hughes*, 2020 NSSC 143.

[5] D.B. has nine siblings. His mother left him with C.G. as a baby. C.G. took D.B. into her care when he was an infant, and eventually became his guardian. C.G. later took D.B.'s younger sister into her care as well. D.B. lived with C.G. and L.G., C.G.'s mother, until he was twelve years old. At that time, when he was

in grade six, D.B. went into foster care, as C.G. was no longer physically able to care for him. D.B. has lived with several families since then. He has ADHD.

[6] Mr. Hughes was a friend of C.G., who introduced him to D.B. Eventually D.B. referred to Mr. Hughes as "Rollie" or "Grandpa", although they were not related. He similarly came to call Mr. Hughes' partner, Martha Burgoyne, "Grandma", although he was not related to her either.

[7] D.B. could not recall exactly when he met Mr. Hughes, but considering his own testimony, and that of C.G., he was about two years old. Mr. Hughes was living in an apartment in Dartmouth, and D.B. was living with C.G. in the Yarmouth area. Mr. Hughes would visit C.G. during the summer.

[8] As time went on, C.G. and D.B. would stay at Mr. Hughes' apartment in Dartmouth when they were shopping for back-to-school clothes in the summer. D.B. would sleep with C.G. on a pull-out bed in the living room.

[9] D.B. eventually started staying at Mr. Hughes' apartment by himself. He stayed with Mr. Hughes for four summers, when he was between the ages of seven and eleven. D.B. had no family or close friends living in Dartmouth at the time.

[10] D.B. could not recall the dates of any of the incidents that are the focus of this trial. He said that he had a better recollection of some incidents than others.

[11] The first incident D.B. recalled involved going four-wheeling with Mr. Hughes at a gravel pit just behind C.G.'s house, in the Yarmouth area. Mr. Hughes was driving the four-wheeler and D.B. was sitting immediately behind him on the back. After driving in the gravel pit, Mr. Hughes drove D.B. to a pond, where they went fishing. At the pond, D.B. said, Mr. Hughes told him to stand up on a rock, and Mr. Hughes then pulled down D.B.'s pants and put his hand and lips on D.B.'s penis for about two minutes. He did not recall if his penis was erect or if Mr. Hughes touched any other parts of his body. After this they continued four-wheeling.

[12] The next incident occurred in L.G.'s bedroom around the same time. He cannot recall when this took place or the time of day. D.B. and Mr. Hughes were watching television and while they were both lying down on the bed Mr. Hughes pulled D.B.'s pajamas down and put his penis in his mouth. Mr. Hughes also instructed D.B. to rub his hand up and down his penis under his clothes. This went on for about five minutes. Mr. Hughes did not ejaculate.

[13] On one occasion while at Mr. Hughes' apartment watching a Pittsburgh Penguins hockey game, Mr. Hughes removed his own pajamas and pulled down D.B.'s pajama pants. He put his mouth and hand on D.B.'s penis and performed oral sex. Mr. Hughes did not ejaculate. Mr. Hughes then directed D.B. to play

with his penis, put his hand and mouth on his penis, and perform oral sex on him. The incident lasted about ten minutes.

[14] On one occasion they were playing a search and find computer game in Mr. Hughes' apartment. Mr. Hughes pulled down his own pants and told D.B. to go under the computer desk, get between his legs, and put his mouth on his penis. He eventually told D.B. to stop. When he came out from under the desk, D.B. saw a flash of a naked man and woman on the screen.

[15] Ms. Burgoyne worked at the Ramada Hotel which had an L-shaped swimming pool with a water slide. D.B. said that to the best of his knowledge, Mr. Hughes did not know how to swim. On one occasion, in the summer, Mr. Hughes was in the deep end hanging on the edge of the pool, pulled D.B.'s swimsuit down, and had D.B. go underwater and put his mouth on his penis to perform oral sex. D.B. had difficulty breathing so he would go up for air and then go back underwater to do it again. Mr. Hughes then said, "it's my turn", and had D.B. sit on the corner of the pool and pull down his swimsuit. Mr. Hughes then put his mouth on D.B.'s penis. This incident lasted for about six minutes. When it was over they went back to swimming and playing in the pool.

[16] Again, while visiting the Ramada Hotel, D.B. was sitting on one of the top benches in the sauna and Mr. Hughes was on one of the lower benches. Mr. Hughes pulled down D.B.'s bathing suit and performed oral sex on him. Mr. Hughes then pulled his own swim suit down and directed D.B. to perform oral sex on him.

[17] On another occasion Mr. Hughes took D.B. on a trail around a lake near the Ramada to go fishing. He put D.B. up on a rock, pulled down D.B.'s pants and put his lips on D.B.'s penis for a couple of minutes.

[18] On a further occasion, Mr. Hughes drove D.B. to Dollar Lake, near the airport, to go swimming. There was a wooden bridge near a playground. When they finished swimming, Mr. Hughes directed D.B. to sit on the bridge, allowing his legs to dangle. He then pulled D.B.'s pants down and put his lips on D.B.'s penis. Mr. Hughes later let him drive on a road leading in and out of the parking lot of the Dollar Lake swim area. D.B. was too short to see over the steering wheel, so Mr. Hughes had him in a booster seat. While D.B. was driving, Mr. Hughes put his lips on D.B.'s penis.

[19] On another occasion, D.B. and Mr. Hughes were watching television on Mr. Hughes' bed, without clothing. Mr. Hughes had D.B. put his mouth on his penis.

He then rolled D.B. onto his side and tried to anally penetrate him, but could not fit his penis into D.B.'s anus. Mr. Hughes then put his mouth on D.B.'s penis.

[20] One night when D.B. was naked in Mr. Hughes' bed, Mr. Hughes directed D.B. to anally penetrate him. Mr. Hughes was lying on his side, pulled D.B. toward him and pushed and pulled D.B. toward and away from him repeatedly while he was being anally penetrated for about five minutes.

[21] D.B. said Mr. Hughes would shower with him every second day.

[22] On one occasion, when showering together, Mr. Hughes directed him to put his mouth on his penis, D.B. expressed some reluctance. In response, Mr. Hughes squirted shampoo into D.B.'s eyes. D.B. said this hurt, burned his eyes, and made him cry.

[23] On one occasion when Mr. Hughes came to visit D.B. in Yarmouth they went four-wheeling. Mr. Hughes took D.B. to a field and touched D.B.'s penis with his hands and mouth. On the way back to C.G.'s, Mr. Hughes drove off a ledge and cracked his ribs.

[24] On another occasion, Mr. Hughes and D.B. were walking on a trail near Mr. Hughes' home, not far from a Tim Horton's and a school. Mr. Hughes pulled

D.B.'s pants down, put his mouth on his penis and started playing with D.B.'s backside.

[25] D.B. said he once told Mr. Hughes that his father had abused him and he was considering reporting it to the police. Mr. Hughes reacted strongly and told him not to make a complaint because it would get him (Mr. Hughes) in trouble.

[26] When D.B. stayed at Mr. Hughes' apartment with C.G., he and C.G. would sleep on the pull-out couch in the living room. When he stayed at the apartment without C.G., although he was supposed to sleep on the pull-out couch, he actually slept between Mr. Hughes and Ms. Burgoyne in their bed. D.B. said he and Mr. Hughes would stay up until 1:00 AM in bed watching "Family Guy" on television each night during one of the summers he stayed with him. Ms. Burgoyne would turn over and go to sleep while they watched television. D.B. initially wore pajamas, but eventually began sleeping without clothes. Mr. Hughes also slept without clothes. Ms. Burgoyne wore pajamas. The only time D.B. and Mr. Hughes wore pajamas was when C.G. visited.

[27] Mr. Hughes did not work. Each morning, Mr. Hughes would drive Ms. Burgoyne to work at the Ramada and return home with breakfast, which was a hot chocolate and four Timbits. They would watch television or play video games on

Mr. Hughes' Wii and Play Station, or go out to do an activity such as playing baseball, swimming, fishing, window shopping, or visiting the Halifax waterfront. They also went to Prince Edward Island for a vacation. Mr. Hughes bought D.B. gifts, such as a remote control Hummer, a scooter, a bicycle, a Pittsburgh Penguins jersey, and a ring. He also bought D.B. a suit for his Grade Six graduation, which Mr. Hughes attended.

[28] When D.B. returned home during the school year, Mr. Hughes would call him almost every night to talk and listen while D.B. played video games. Mr. Hughes also came to visit a couple of times during the school year.

[29] C.G. eventually became ill and could no longer care for D.B. D.B. moved in with foster parents and stopped visiting Mr. Hughes. He told a foster parent, B.W., what happened with Mr. Hughes, in 2014. He said that prior to the change in his living arrangement he was afraid to tell anyone about what had occurred with Mr. Hughes, and did not know what to do about it. He made a police complaint in 2016.

[30] D.B. said that he attempted suicide while he was living with C.G.

Kienapple

[31] On the facts presented at trial, I found Mr. Hughes guilty of offences contrary to ss.151, 152 and 271. The Crown and defence agree, that considering the *Kienapple* principle, the court should stay the s. 271 sexual assault charge and sentence Mr. Hughes on the ss. 151 and 152 charges. They also jointly recommend that any sentence in relation to s.152 run concurrently with whatever sentence I impose for the s.151 offence. I agree.

Criminal Record

[32] Mr. Hughes admits that he has a prior criminal record, described by the Crown as follows:

> -Two counts of gross indecency, or what was then s.157 CC, in 1983. He received a sentence of 90 days' imprisonment and 2 years' probation. According to the records of the Calgary Police Service, the victim was a 10-year-old girl;
>
> -Driving over .08, or what was then s..236 CC, in 1986;
>
> -Driving over .08, or what was then s.237(b) CC, in 1988;
>
> -Keeping a common bawdy house, or what was then s.210(1) CC, in 1994. He received a sentence of 6 months' imprisonment and 1 year of probation. Several complainants, all young women, reported Mr. Hughes giving them a place to stay in his home and then pimping them.

[33] While Mr. Hughes criminal record is dated, and therefore subject to the gap principle, it does reveal prior sexual crimes on children by him when he was an adult, as well as other sex-related crimes on vulnerable members of society.

Presentence Report

[34] According to the Presentence Report, Mr. Hughes is currently 71 years old. In describing his upbringing, Mr. Hughes said:

> "There was lots of love but nothing else," adding his family had been "extremely poor". The subject mentioned that there had been no form of abuse in the home, nor were there any issues with drugs or alcohol.

[35] The author of the presentence report spoke to Martha Burgoyne, Mr. Hughes' wife. According to D.B., he slept naked, in the marital bed, with Ms. Burgoyne and Mr. Hughes during the summers. Ms. Burgoyne did not testify at trial. Given the facts I found at trial, it is difficult to place much weight on Ms. Burgoyne's comments. Notably, the presentence report states:

> This writer spoke to Ms. Martha Burgoyne, wife of the subject, in order to ascertain her comments in preparation of this report. Ms. Burgoyne characterized the subject as "lovable, generous…he'd do anything for anybody". According to Ms. Burgoyne, the subject has not had any issues with drugs, alcohol, mental health or anger management.
>
> In discussing the offences presently before the Court, Ms. Burgoyne expressed, "I couldn't believe it. After all we did for him every summer. Trueman was just like a father to him." In terms of intervention strategies which could be utilized at the time of sentencing, Ms. Burgoyne indicated it is her belief the subject was not in need of any type of programming or counselling.

[36] In describing his own health, Mr. Hughes told the author:

> Mr. Hughes stated he was diagnosed with high blood pressure and high cholesterol. In addition, he commented he suffers from chronic pain, resulting from a car accident several years ago. The subject mentioned he does not have any mental health issues. Mr. Hughes reported he sees a doctor on a regular basis.

[37] His counsel advises that his chronic back pain is debilitating and has to be treated with opiates. Mr. Hughes also provided the court with the following letter from his family physician, dated December 14, 2020:

> This letter is in accordance with our conversation, with the consent of Mr. Roland Hughes to discuss his medical issues with you.
>
> I'm writing this letter, indicating that Mr. Roland Hughes was complaining of Shortness of breath. He indicated that he used to be a smoker for 50 years. He quit 7 years ago, because of that, he was sent for a chest CT scan of his lungs to rule out lung cancer, and a Pulmonary Function test to rule out COPD.
>
> Mr. Hughes also complaint that he notices a skin lesion on his back. When I examined him, I noticed a number of moles which are suspicious of malignant melanoma, I referred him to a Dermatologist.
>
> Mr. Hughes is on treatment for Chronic back pain due to a fall from heights a long time ago, high Blood pressure and Hyperlipidemia.
>
> I hope this information is satisfactory for you. If any further information needed, please feel free to contact me.
>
> Sincerely,
>
> Dr Mary Hanna
>
> [*as appears in original*]

[38] While Mr. Hughes may have some health issues that will be explored by the appropriate specialists, as of the date of sentencing no serious illness has been verified by a medical professional.

[39] Mr. Hughes denied responsibility for the offences, and told the author:

> In discussing the offences presently before the Court, Mr. Hughes stated he did not accept responsibility, and he was not receptive to attending for any Court-ordered counselling or programming. The subject expressed, "No, I don't accept responsibility, I certainly don't." He further explained, "I would never in my entire life hurt a child. I would never do that at all." Mr. Hughes added, "I am deeply, deeply, deeply hurt" and feels the victim "needs help".

[40] Mr. Hughes has the right to maintain his innocence, despite my findings of fact at trial. However, considering his prior record, Mr. Hughes comment that he "would never in his entire life hurt a child." shows a complete lack of understanding of the harm suffered by children when sexually abused by an adult.

Aggravating Factors

[41] The aggravating factors in this case include:

- D.B. was under the age of 16 when the abuse occurred;
- Mr. Hughes was in a position of trust to D.B.;
- The repeated nature of the abuse;
- D.B.'s vulnerability due to his personal circumstances, and as an Indigenous youth;
- To a lesser extent considering the "gap" principle, Mr. Hughes' very dated, but prior record for sex crimes.

Mitigating Factors

[42] The mitigating factors in this case include:

- Mr. Hughes' age;
- Mr. Hughes' health;

Legislation

[43] Section 271 of the *Criminal Code* states:

> Everyone who commits a sexual assault is guilty of
>
> (a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, 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) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, 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 six months.

[44] Section 151 of the *Criminal Code* states:

> 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. [Emphasis added]

[45] Section 152 of the *Criminal Code* states:

> Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the 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. [Emphasis added]

[46] Section 718, 718.1 and 718.01 of the *Criminal Code* state:

> 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 acknowledgment of the harm done to victims or to the community.
>
> 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
>
> 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.

Position of the parties

The Crown Position

[47] The Crown says that Mr. Hughes should be sentenced to prison for six to seven years. They also recommend a number of ancillary orders. In making this recommendation, the Crown mainly relies on *R. v. Friesen*, 2020 SCC 9.

Mr. Hughes' Position

[48] Counsel for Mr. Hughes suggests that a suspended sentence, followed by three years' probation. is a satisfactory sentence in this case. He offers no specific authority in support of this position. The main foundation for his argument is that Mr. Hughes is 71 years old and has some health issues. However, no compelling evidence was presented regarding these health issues, and significantly, no evidence was presented that he would not be able to obtain proper treatment if incarcerated in a correctional facility. On this issue, the Crown refers to Clayton Ruby, *Sentencing*, in which the author states variously at pp.296-298:

> **19. ILLNESS OR INJURY OF THE DEFENDANT**
>
> **§5.177** Any serious illness or injury will cause additional hardship for an offender during incarceration, and, as such, is treated as a mitigating factor.
>
> …
>
> **§5.179** In *R. (A.),* the offender had sexual intercourse with his 13-year-old daughter 20 years prior. By the time of sentencing he was 71 years old and was suffering from muscular dystrophy. He was wheelchair-bound and required around-the-clock-attention. The Court of Appeal allowed his appeal and substituted a suspended sentence and probation for two years. Twaddle J.A., writing for the court, observed:
>
>> An accused's infirmity, always a factor to be considered, may warrant a reduction in a sentence that would otherwise have been imposed or a

> different kind of sentence. It all depends on the nature and effect of the infirmity and the nature and seriousness of the crime. Compassion must neither be stifled nor allowed to take control.

Later she added:

> …Justice without clemency, in appropriate circumstances, is injustice.
>
> The accused has suffered the stigma of a conviction for a repugnant offence. Ordinarily, that would not be enough. But he already suffers in his old age, through the force of destiny, from a debilitating illness. Prison for this man would be far worse punishment than for others. And, from a public point of view, one may well ask whether there is any purpose to be served in paying for him to be hospitalized for the duration of his sentence.

…

§5.183 In *Drabinsky*, the Court of Appeal rejected the argument that the offender should be entitled to leniency as a result of his illness. The offender had suffered from polio at a young age. His mobility was impaired and he was often in pain. Although the offender's health issues were a mitigating factor, they "did not justify a departure from the established range of sentence." This was partly because there was no evidence that these health issues could not "be addressed by the correctional authorities".

§5.184 The Ontario Court of Appeal took a similar approach in *H.S.*, where the offender's medical conditions could be treated while in custody. The offender suffered from a number of illnesses and conditions, including diabetes, a growth on his pituitary gland, and Sleep Apnea Syndrome. Where the offender seeks to rely on a medical condition as a mitigating factor, they ought to present evidence that the conditions cannot be properly treated while incarcerated.

[49] Mr. Hughes has not provided any evidence of the type of debilitating issues that would reduce his sentence as he requests, nor has he provided any evidence regarding a lack of proper treatment in the relevant correctional facility. He emphasizes his age (71) and his health (which is imperfect). Put another way, Mr. Hughes has not provided any foundation for a finding that he cannot serve time in custody without endangering his life or health.

[50] Some positive community comments have been presented to the court about Mr. Hughes. In the presentence report Mr. Hughes' landlord, Donna Zaghloul, said:

> This writer contacted the subject's landlord, Ms. Donna Zaghloul, for her comments in preparation of this report. She advised she has known this subject since 1989 and described him as "a model tenant. He helps people in the building. He's always polite and courteous. He's good mannered, and I've never had any issues with him. I wish I had 129 tenants like him." According to Ms. Zaghloul, the subject's wife and son depend on him, as he is the primary caregiver.

[51] In the materials filed for this sentencing, Mr. Hughes included a letter of reference from Ms. Zaglouol, which reiterates her positive sentiments about him. Additionally, Mr. Hughes provided a glowing reference from his niece, Tanya Williams. It states in part:

> I see that he is kind to and not selfish.
>
> He is protective with the people he cares about.
>
> Always has a calm voice when speaking to people.
>
> Always puts others first.
>
> Helps others out when he can.
>
> Rolly listens to both sides of a story before giving advice on a situation to give good points on the issues.
>
> He helps you if your in need of clothes, food or a place to stay until you get yourself back on track.
>
> Good listener.
>
> [*as appears in original*]

[52] The letter from Ms. Williams also contains some comments that are curious, considering the nature of his previous (although dated) convictions, combined with the facts of this offence. Ms. Williams wrote the following:

> I have left my kids in his care alone scents my kids were babies, for reasons for eaither a visit, I would need to get out to do my errans and pay bills, and get groceries.
>
> …
>
> He buys my kids things because he loves them and not just because they want him too and he does it for special occaisions.
>
> He takes them to movies, acrades to spend time with them.
>
> They go on day trips to the zoo and out for walks.
>
> I have full trust in leaving my two kid alone with my uncle Rolly and I have full confindence that he takes care of both of them in things that need to be done like feeding them, giving them their medication when needed, helping to read to them, playing games, and school work. (doing).
>
> I leave my kids in his care will before I would leave them in their fathers care if I had the choice to choose.
>
> Rolly lives beside my kids daycare, and school he helps them to daycare and school for me when I am unable too and picks them up too.
>
> My kids look up to their uncle Rolly and they run up to him and hug him and they all smile whever they see each other.
>
> …
>
> He has been their for all of us for many different things no matter the weather and the situation.
>
> My kids ask to have visits with Rolly because he is family and he is their for them.
>
> Rolly has changed his small car to a big family size car to fit all of us in so no one is left behinde when needed to go anywhere.
>
> He has changed my kids diapers and clothes when needed from baby age and as they grown up till they wear able to do things themselves.
>
> Rolly has lived beside a daycare that my kids go to for over 20 yrs and there has never been a bad report about him or his behavour around kids. He has also entered the daycar and school my kids atten to bring them into their classes and help get them settled in
>
> . [*as appears in original*]

[53] In urging the court not to incarcerate Mr. Hughes, and instead to sentence him to three-years probation, his counsel refers to two cases that pre-date *Friesen*, those being *R. v. G.H.E.*, 2017 NSSC 281, and *R. v. G.K.N.*, 2014 NSSC 150. In both of those cases, prior to the direction provided by the Supreme Court of Canada in *Friesen*, the courts imposed custodial sentences (two years in custody in *G.H.E.* and 18 months in custody in *G.K.N.*). The defence also refers to *R. v. W.G.L.*, 2020 NSSC 323, where Rosinski J. considered *Friesen*, and sentenced the offender to three and half years in prison. Addressing *W.G.L.* in his brief, Mr. Hughes' counsel says:

> Similarly, in *R v WGL,* Justice Rosinski addressed the effect of *Friesen* on the appropriateness of sentence in these kinds of cases in Nova Scotia. That case bears some similarity to the case at bar for a number of reasons: the defendant was 64 years of age; he was convicted following a trial and expressed no remorse; the victim was his step-daughter; and the assaultive behaviour was prolonged over 5 years. The defendant in that case also had some physical limitations as a result of a car accident, though as Justice Rosinski summarized from the Pre-Sentence Report, the defendant's health was otherwise good. Justice Rosinski sentenced the defendant to three and one-half years in custody.

[54] In discussing Mr. Hughes' health, defence counsel says:

> Mr. Hughes suffered injuries to his back several years ago while falling through an open vent while attempting to move furniture. Since then, he has been effectively unable to manage the pain, and has been prescribed various levels of opiates in an attempt to numb the pain enough to function. He is currently prescribed morphine and had previously been prescribed hydromorphone. He reports that in order to sleep at night, he essentially has to wrap himself in pillows, or he will not be able to function the following day, regardless of his prescriptions.

> As the selected medical history attached shows, even with the significant opiate prescriptions Mr. Hughes takes, his pain is not easily managed. I would suggest that Your Lordship can take judicial notice that accommodations while in custody are very minimal. While the reason for the basic accommodations is certainly understandable, it would undoubtedly exacerbate Mr. Hughes' already difficult to manage pain. This is further confirmed by Dr. Hanna's certification in 2017, that Mr. Hughes was medically unable to serve on a jury because of his level of chronic pain and long history of taking an opiate to treat it.

[55] Counsel for Mr. Hughes also refers to *R. v. M.(C.A.),* [1996] 1 SCR 500, where the court restored a sentence of 25 years for a "disturbing, horrific pattern of physical and sexual abuse which the nine children suffered at the hands of the respondent. From 1988 to 1991, it does not appear to be seriously contested that the daily lives of these children were punctuated by cruel, spontaneous acts of aggravated violence perpetrated by their father" (para. 7). Mr. Hughes' counsel points out the following comments made by Lamer C.J., for the court, about the relevance of the advanced age of an offender on sentencing:

> 74 However, in the process of determining a just and appropriate fixed-term sentence of imprisonment, the sentencing judge should be mindful of the age of the offender in applying the relevant principles of sentencing. After a certain point, the utilitarian and normative goals of sentencing will eventually begin to exhaust themselves once a contemplated sentence starts to surpass any reasonable estimation of the offender's remaining natural life span. Accordingly, in exercising his or her specialized discretion under the *Code*, a sentencing judge should generally refrain from imposing a fixed-term sentence which so greatly exceeds an offender's expected remaining life span that the traditional goals of sentencing, even general deterrence and denunciation, have all but depleted their functional value. But with that consideration in mind, the governing principle remains the same: Canadian courts enjoy a broad discretion in imposing numerical sentences for single or multiple offences, subject only to the broad statutory parameters of the *Code* and the fundamental principle of our criminal law that global sentences be "just and appropriate".

[56] Nonetheless, the Supreme Court of Canada unanimously reversed the decision of the British Columbia Court of Appeal, which had reduced the sentence from 25 years to 20 years. The Chief Justice said:

> 94 With the greatest respect, I believe the Court of Appeal erred in this instance by engaging in an overly interventionist mode of appellate review of the "fitness" of sentence which transcended the standard of deference we articulated in *Shropshire*. Notwithstanding the existence of some empirical studies which question the general deterrent effect of sentencing, it was open for the sentencing judge to reasonably conclude that the particular blend of sentencing goals, ranging from specific and general deterrence, denunciation and rehabilitation to the protection of society, required a sentence of 25 years in this instance. Moreover, on the facts, the sentencing judge was entitled to find that an overall term of imprisonment of 25 years represented a "just sanction" for the crimes of the respondent.
>
> 95 The respondent committed a vile pattern of physical and sexual abuse against the very children he was entrusted to protect. The degree of violence exhibited in these crimes was disturbingly high, and the respondent's children will undoubtedly be scarred for life. The psychiatrist and psychologist who examined the respondent agree that he faces dim prospects of rehabilitation. Without doubt, the respondent deserves a severe sentence which expresses the society's revulsion at his crimes.
>
> 96 After taking into account all the circumstances of the offence, the trial judge sentenced the respondent to 25 years' imprisonment. In imposing that term of imprisonment, Filmer Prov. Ct. J. was at liberty to incorporate credit for time served in custody pursuant to s. 721(3) of the *Code*, but chose not to. I see no reason to believe that the sentencing order of Filmer Prov. Ct. J. was demonstrably unfit.

R. v. Friesen

[57] In *Friesen*, the court dictated significant changes in sentencing adults for sexual crimes on children. In that case, a 29 year old accused, with no prior record, and deemed to be a high risk to reoffend, was convicted of sexually

interfering with a four year old. The majority of the Supreme Court of Canada upheld a six-year sentence. In doing so, they carefully explained how to determine an appropriate sentence in similar circumstances. The court in *Friesen* explained why they were addressing the need to change the sentencing range for this type of crime:

> [46] Because protecting children is so important, we are very concerned by the prevalence of sexual violence against children. This "pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths" continues to harm thousands more children and youth each year ... In Canada, both the overall number of police-reported sexual violations against children and police-reported child luring incidents more than doubled between 2010 and 2017, and police-reported child pornography incidents more than tripled ... Courts are seeing more of these cases ... Whatever the reason for the increase in police-reported incidents, it is clear that such reports understate the occurrence of these offences...
>
> [50] To effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause. Getting the wrongfulness and harmfulness right is important. As Pepall J.A. recognized in *R. v. Stuckless*, 2019 ONCA 504, 146 O.R. (3d) 752 ("*Stuckless (2019)*"), failure to recognize or appreciate the interests that the legislative scheme of offences protects can result in unreasonable underestimations of the gravity of the offence... Similarly, it can result in stereotypical reasoning filtering into the sentencing process and the consequent misidentification and misapplication of aggravating and mitigating factors... Properly understanding the harmfulness will help bring sentencing law into line with society's contemporary understanding of the nature and gravity of sexual violence against children and will ensure that past biases and myths do not filter into the sentencing process...
>
> [74] It follows from this discussion that sentences must recognize and reflect both the harm that sexual offences against children cause and the wrongfulness of sexual violence. In particular, taking the harmfulness of these offences into account ensures that the sentence fully reflects the "life-altering consequences" that can and often do flow from the sexual violence... Courts should also weigh these harms in a manner that reflects society's deepening and evolving understanding of their severity...

Proportionality and Parity

[58] The court in *Friesen* explained how the concepts of proportionality and parity work together:

> [33] In practice, parity gives meaning to proportionality. A proportionate sentence for a given offender and offence cannot be deduced from first principles; instead, judges calibrate the demands of proportionality by reference to the sentences imposed in other cases. Sentencing precedents reflect the range of factual situations in the world and the plurality of judicial perspectives. Precedents embody the collective experience and wisdom of the judiciary. They are the practical expression of both parity and proportionality.

Range of Sentence

[59] In the instant case the Crown is asking for six to seven years in custody for Mr. Hughes. In *Friesen*, the court explained that due to the need for individualized sentencing, ranges are guidelines only and stated:

> [37] This Court has repeatedly held that sentencing ranges and starting points are guidelines, not hard and fast rules... Appellate courts cannot treat the departure from or failure to refer to a range of sentence or starting point as an error in principle. Nor can they intervene simply because the sentence is different from the sentence that would have been reached had the range of sentence or starting point been applied... Ranges of sentence and starting points cannot be binding in either theory or practice, and appellate courts cannot interpret or apply the standard of review to enforce them, contrary to *R. v. Arcand*, 2010 ABCA 363, 40 Alta. L.R. (5th) 199, at paras. 116-18 and 273. As this Court held in *Lacasse*, to do so would be to usurp the role of Parliament in creating categories of offences...
>
> [38] The deferential appellate standard of review is designed to ensure that sentencing judges can individualize sentencing both in method and outcome. Sentencing judges have considerable scope to apply the principles of sentencing in any manner that suits the features of a particular case. Different methods may

> even be required to account properly for relevant systemic and background factors... Similarly, a particular combination of aggravating and mitigating factors may call for a sentence that lies far from any starting point and outside any range...

Personal Autonomy, Bodily Integrity, Sexual Integrity and Equality

[60] In *Friesen,* the court discussed need for a child to develop free from sexual interference. The court emphasized the need for courts to consider the emotional and psychological harm caused by a sexual assault due to the impact on a victim's personal autonomy and bodily integrity:

> [52] We would note that the personal autonomy interest carries a somewhat different meaning for children than it does for adults. Children under the age of 16 of course lack the capacity to consent to sexual contact with an adult. As we will explain in detail later in these reasons, a child's participation in such contact is not a mitigating factor and should never be equated to consent. Instead, personal autonomy refers to a child's right to develop to adulthood free from sexual interference and exploitation by adults...
>
> [56] 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, as this Court held in *R. v. McCraw*, [1991] 3 S.C.R. 72, "may often be more pervasive and permanent in its effect than any physical harm" (p. 81).
>
> [57] A number of this Court's decisions provide insight into these forms of harm. In *R. v. L. (D.O.)*, [1993] 4 S.C.R. 419, L'Heureux-Dubé J. emphasized the emotional trauma that the nine-year old complainant experienced from sexual violence... Similarly, in *McDonnell*, McLachlin J. (as she then was) stressed the emotional harm of "the violation of the child victim's integrity and sense of self-worth and control over her body" that the child victim experienced as a result of being sexually assaulted while sleeping (para. 111). The likely result of the sexual assault would be "shame, embarrassment, unresolved anger, a reduced ability to trust others and fear that . . . people could and would abuse her and her body" (para. 113).

> [58] These forms of harm are particularly pronounced for children. 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" (*Stuckless (2019)*, at para. 136, per Pepall J.A.). As Otis J.A. explained in *L. (J.-J.)*, at p. 250:
>
>> [TRANSLATION] The shattering of the personality of a child at a stage where [the child's] budding organization as a person has only a very fragile defensive structure, will result — in the long term — in suffering, distress and the loss of self-esteem.

Damage to Children's Relationship With Their Families and Communities

[61] D.B.'s mother left him in the care of C.G. as an infant. C.G. allowed Mr. Hughes to take D.B. into his care at times. D.B. referred to Mr. Hughes as Grandpa. While Mr. Hughes was not directly related to D.B., the relationship was analogous to that of a caregiver or relative. The court in *Friesen* considered the impact on children who are sexually abused by family members and caregivers:

> [60] 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 breach of a 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... Children who are or have been in foster care may be particularly vulnerable since making an allegation can result in the end of a placement or a return to foster care... Even when a parent or caregiver is not the perpetrator, the sexual violence can still tear apart families or render them dysfunctional... For instance, siblings and parents can reject victims of sexual violence because they blame them for their own victimization... Victims may also lose trust in the ability of family members to protect them and may withdraw from their family as a result...

> [61] The ripple effects can cause children to experience damage to their other social relationships. 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... This loss of trust is compounded when members of the community take the side of the offender or humiliate and ostracize the child... Technology and social media can also compound these problems by spreading images and details of the sexual violence throughout a community...

Harm to Families, Communities and Society

[62] The court in *Friesen* also discussed the impact on the community as a whole resulting from child sexual abuse:

> [64] Beyond the harm to families and caregivers, there is 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. Children are the future of our country and our communities. They deserve to have a childhood free of sexual violence... When children become victims of sexual violence, "[s]ociety as a whole is diminished and degraded" (*Hajar*, at para. 67).

Wrongfulness of Exploiting Children's Weaker Position in Society

[63] In *Freisen*, the court emphasised children's vulnerable position in society and society's need to protect children:

> [65] The protection of children is one of the most fundamental values of Canadian society. Sexual violence against children is especially wrongful because it turns this value on its head. In reforming the legislative scheme governing sexual offences against children, Parliament recognized that children, like adults, deserve to be treated with equal respect and dignity... Yet instead of relating to children as equal persons whose rights and interests must be respected, offenders treat children as sexual objects whose vulnerability can be exploited by more powerful adults. 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... In 2012, 55% of victims of police-reported sexual offences were children or youth under the age of 18...
>
> [66] Children are most vulnerable and at risk at home and among those they trust... More than 74% of police-reported sexual offences against children and youth took place in a private residence in 2012 and 88% of such offences were committed by an individual known to the victim...
>
> [67] It is for this reason that sexual violence against children can all too often be invisible to society. To resist detection, offenders perpetrate sexual violence against children in private, coerce children into not reporting, and rely on society's false belief that sexual violence against children is an aberration confined to a handful of abnormal individuals... Violence against children thus remains hidden, unreported, and under-recorded... The under-reporting of sexual violence against children is compounded by the ways in which the criminal justice system and the court process have historically failed children, including through rules of evidence premised on the assumption that children are inherently unreliable witnesses...

Particular Challenge to a Male Victim

[64] The court in *Friesen* explained the disproportionate impact sexual violence has on girls and young women, but the court also identified the particular challenges facing boys and young men who have been victimized by sexual violence:

> [69] None of this should detract from the particular challenges that boys and young men who are the victims of sexual violence face. Victimization can be

> particularly shameful for boys because of social expectations that males are supposed to appear tough... Embarrassment, humiliation, and homophobia form a particularly toxic and stigmatizing combination for male child victims...

Disproportionate Impact on Indigenous People and Other Vulnerable Groups

[65] D.B. is Indigenous. He is a member of one of Nova Scotia's First Nations. The court in *Friesen* drew specific attention to the need to address the issue of child victims who are Indigenous:

> [70] Children who belong to groups that are marginalized are at a heightened risk of sexual violence that can perpetuate the disadvantage they already face. This is particularly true of Indigenous people, who experience childhood sexual violence at a disproportionate level... Canadian government policies, particularly the physical, sexual, emotional, and spiritual violence against Indigenous children in Indian Residential Schools, have contributed to conditions in which Indigenous children and youth are at a heightened risk of becoming victims of sexual violence... In particular, the over-representation of Indigenous children and youth in the child welfare system makes them especially vulnerable to sexual violence... We would emphasize that, when a child victim is Indigenous, the court may consider the racialized nature of a particular crime and the sexual victimization of Indigenous children at large in imposing sentence...
>
> [Emphasis Added]

Sentencing Must Reflect the Contemporary Understanding of Sexual Violence Against Children: Potential Harm and Actual Harm

[66] The court in *Friesen* discussed how sentences involving the sexual assault of children by adults must reflect today's understanding of the harm caused by such crimes:

> [75] In particular, courts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle. Accurately understanding both factors is key to imposing a proportionate sentence... The wrongfulness and the harmfulness impact both the gravity of the offence and the degree of responsibility of the offender. Taking the wrongfulness and harmfulness into account will ensure that the proportionality principle serves its function of “ensur[ing] that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused” (*Nasogaluak*, at para. 42).
>
> [76] Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender’s actions and the consequential harm to children and their families, caregivers, and communities... We thus offer some guidance on how courts should give effect to the gravity of sexual offences against children. Specifically, 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 that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.

[67] C.G. testified that D.B. had suicidal thoughts while living with her. Any child’s mental health is seriously harmed when that child is sexually abused by an adult. Considering the comments in *Friesen*, Mr. Hughes’ repeated sexual abuse has had and/or will have a serious impact on D.B.’s mental health. There is real potential for ongoing harm in this case. As the court noted in *Friesen*:

> [79] In addition to the inherent wrongfulness of physical interference and exploitation, courts have recognized that sexual violence against children inherently has the potential to cause several recognized forms of harm. The likelihood that these forms of potential harm will materialize of course varies depending on the circumstances of each case. However, the potential that these forms of harm will materialize is always present whenever there is physical interference of a sexual nature with a child and can be present even in sexual

offences against children that do not require or involve physical interference. These forms of potential harm illustrate the seriousness of the offence even absent proof that they have materialized into actual harm...

[80] We wish to focus courts' attention on the following two categories of harm: harm that manifests itself during childhood, and long-term harm that only becomes evident during adulthood. During childhood, in addition to the inherent wrong of interference with their bodily integrity, children can experience physical and psychological harm that persists throughout their childhood... These forms of harm can be so profound that children are "robbed of their youth and innocence" (*D. (D.)*, at para. 10). The following list of recognized forms of harm that manifest themselves during childhood makes this clear:

> 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; a 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.
>
> (Bauman, at pp. 354-55)

[81] Sexual violence against children also causes several forms of long-term harm that manifest themselves during the victim's adult years. First, children who are victims of sexual violence may have difficulty forming a loving, caring relationship with another adult as a result of the sexual violence. Second, children may be more prone to engage in sexual violence against children themselves when they reach adulthood... Third, children 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...

[83] In many cases, it will be impossible to determine whether these forms of harm have occurred at the time of sentencing. If the victim is an adult at the time of sentencing, the court may be able to conclude that these forms of potential long-term harm have materialized into actual harm. However, as Moldaver J.A. (as he then was) recognized in *D. (D.)*, if the victim remains a child at the time of sentencing, "[t]ime alone will tell" whether that child will experience particular forms of harm as an adult (para. 38). It may also be impossible to determine the nature and extent of the harm that the victim will experience during childhood, since particular forms of harm may materialize following the date of sentencing.

> [84] As a result, courts must consider the reasonably foreseeable potential harm that flows from sexual violence against children when determining the gravity of the offence. Even if an offender commits a crime that fortunately results in no actual harm, courts must consider the potential for reasonably foreseeable harm when imposing sentence... When they analyze the gravity of the offence, sentencing judges thus must always take into account forms of potential harm that have yet to materialize at the time of sentencing but that are a reasonably foreseeable consequence of the offence and may in fact materialize later in childhood or in adulthood. To do otherwise would falsely imply that a child simply outgrows the harm of sexual violence...

Moral Culpability of Trueman Roland Hughes

[68] Sexual violence is morally blameworthy because it involves the exploitation of a child victim by the offender. Mr. Hughes has prior convictions for exploiting children and young adults for a sexual purpose. As the court explained in *Friesen:*

> [88] Intentionally applying force of a sexual nature to a child is highly morally blameworthy because the offender is or ought to be aware that this action can profoundly harm the child. In assessing the degree of responsibility of the offender, courts must take into account the harm the offender intended or was reckless or wilfully blind to... For sexual offences against children, we agree with Iacobucci J. that, save for possibly certain rare cases, offenders will usually have at least some awareness of the profound physical, psychological, and emotional harm that their actions may cause the child...
>
> [89] All forms of sexual violence, including sexual violence against adults, are morally blameworthy precisely because they involve the wrongful exploitation of the victim by the offender — the offender is treating the victim as an object and disregarding the victim's human dignity... As L'Heureux-Dubé J. reasoned in *L. (D.O.)*, "the occurrence of child sexual abuse is one intertwined with the sexual abuse of all women" precisely because both forms of sexual offences involve the sexual objectification of the victim (p. 441). Courts must give proper weight in sentencing 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...
>
> [90] The fact that the victim is a child increases the offender's degree of responsibility. Put simply, the intentional sexual exploitation and objectification

> of children is highly morally blameworthy because children are so vulnerable... As L'Heureux-Dubé J. recognized in *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, "As to moral blameworthiness, the use of a vulnerable child for the sexual gratification of an adult cannot be viewed as anything but a crime demonstrating the worst of intentions" (para. 31, quoting *R. v. L.F.W.* (1997), 155 Nfld. & P.E.I.R. 115 (N.L.C.A.), at para. 117, per Cameron J.A...) Offenders recognize children's particular vulnerability and intentionally exploit it to achieve their selfish desires... We would emphasize that the moral blameworthiness of the offender increases when offenders intentionally target children who are particularly vulnerable, including children who belong to groups that face discrimination or marginalization in society.

[69] Mr. Hughes created a position of trust for himself with D.B., physically isolated D.B. for protracted periods of time, groomed D.B., and then committed multiple and varied sex crimes on D.B. over the course of years.

Parliament Has Mandated That Sentences for Sexual Offences Against Children Must Increase

[70] In *Friesen,* the court noted that Parliament has increased sentences involving sexual offences against children. The court said:

> [95] Parliament has recognized the profound harm that sexual offences against children cause and has determined that sentences for such offences should increase to match Parliament's view of their gravity. Parliament has expressed its will by increasing maximum sentences and by prioritizing denunciation and deterrence in sentencing for sexual offences against children.
>
> [98] Parliament has repeatedly increased sentences for sexual offences against children. These increases began in 1987 with Bill C-15. By abolishing the historic offences of indecent assault on a female and acts of gross indecency and creating the sexual interference offence, Parliament effectively doubled the maximum sentence from five to ten years for sexual offences against children that did not involve vaginal or anal penetration... Parliament has repeatedly signalled society's increasing recognition of the gravity of sexual offences against children in the years that followed. In 2005, Parliament tripled the maximum sentences for sexual interference, invitation to sexual touching, and sexual exploitation in cases in which the Crown proceeds summarily from six months to 18 months by enacting Bill C-2, *An Act to amend the Criminal Code (protection of children and*

> *other vulnerable persons) and the Canada Evidence Act*, S.C. 2005, c. 32. Finally, in 2015, Parliament enacted the *Tougher Penalties for Child Predators Act*, S.C. 2015, c. 23. This statute increased the maximum sentences of these three offences and sexual assault where the victim is under the age of 16 from 10 to 14 years when prosecuted by indictment and from 18 months to 2 years less a day when prosecuted by way of summary conviction (ss. 2-4). This statute also increased the maximum sentences for numerous other sexual offences against children as indicated in the Appendix to these reasons.
>
> [99] These successive increases in maximum sentences indicate Parliament's determination that sexual offences against children are to be treated as more grave than they had been in the past. As Kasirer J.A. (as he then was) reasoned in *Rayo*, the legislative choice to increase the maximum sentence for child luring [TRANSLATION] "must be understood as a sign of the gravity of this crime in the eyes of Parliament" (para. 125). We agree with Pepall J.A.'s conclusion in *Stuckless (2019)* that Parliament's legislative initiatives thus give effect to society's increased understanding of the gravity of sexual offences and their impact on children (paras. 90, 103 and 112).
>
> [100] To respect Parliament's decision to increase maximum sentences, courts should generally impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences. As Kasirer J.A. recognized in *Rayo* in the context of the offence of child luring, Parliament's view of the increased gravity of the offence as reflected in the increase in maximum sentences should be reflected in [TRANSLATION] "toughened sanctions" (para. 175; see also *Woodward*, at para. 58). Sentencing judges and appellate courts need to give effect to Parliament's clear and repeated signals to increase sentences imposed for these offences. [Emphasis added]

Section 718.01

[71] Parliament also signaled the need to emphasize denunciation and deterrence when sentencing an adult for committing a sexual crime on a child by enacting s.718.01. As the court noted in *Friesen*:

> [104] Section 718.01 thus qualifies this Court's previous direction that it is for the sentencing judge to determine which sentencing objective or objectives are to be prioritized. Where Parliament has indicated which sentencing objectives are to receive priority in certain cases, the sentencing judge's discretion is thereby

> limited, such that it is no longer open to the judge to elevate other sentencing objectives to an equal or higher priority... However, while s. 718.01 requires that deterrence and denunciation have priority, nonetheless, the sentencing judge retains discretion to accord significant weight to other factors (including rehabilitation and *Gladue* factors) in exercising discretion in arriving at a fit sentence, in accordance with the overall principle of proportionality...
>
> [105] Parliament's choice to prioritize denunciation and deterrence for sexual offences against children is a reasoned response to the wrongfulness of these offences and the serious harm they cause. The sentencing objective of denunciation embodies the communicative and educative role of law... It reflects the fact that Canadian criminal law is a "system of values". A sentence that expresses denunciation thus condemns the offender "for encroaching on our society's basic code of values"; it "instills the basic set of communal values shared by all Canadians" (*M. (C.A.)*, at para. 81). The protection of children is one of the most basic values of Canadian society... As L'Heureux-Dubé J. reasoned in *L.F.W.*, "sexual assault of a child is a crime that is abhorrent to Canadian society and society's condemnation of those who commit such offences must be communicated in the clearest of terms" (para. 31, quoting *L.F.W. (C.A.)*, at para. 117, per Cameron J.A.).

Analysis

[72] The Supreme Court of Canada has clearly emphasized the paramountcy of denunciation and deterrence in cases that involve sexual abuse by adults on children, as in this case. Mr. Hughes is 71 years old and is not in perfect health. But no evidence was presented that his health is such that he cannot be safely incarcerated.

[73] His moral culpability is high. He preyed on a vulnerable young person over a period of years. The damage he has caused to D.B. will likely be lifelong. Mr. Hughes also has a dated, but relevant, prior record for sex crimes.

[74] The Supreme Court of Canada has directed that longer sentences should now be imposed than were previously imposed for sex crimes by adults on children. In *Friesen*, the court stated:

> [114] *D. (D.)*, *Woodward*, *S. (J.)*, and this Court's own decisions in *M. (C.A.)* and *L.M.* make clear that imposing proportionate sentences that respond to the gravity of sexual offences against children and the degree of responsibility of offenders will frequently require substantial sentences. Parliament's statutory amendments have strengthened that message. It is not the role of this Court to establish a range or to outline in which circumstances such substantial sentences should be imposed. Nor would it be appropriate for any court to set out binding or inflexible quantitative guidance — as Moldaver J.A. wrote in *D. (D.)*, "judges must retain the flexibility needed to do justice in individual cases" and to individualize the sentence to the offender who is before them (at para. 33). Nonetheless, it is incumbent on us to provide an overall message that is clear... That message is 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. We would add that substantial sentences can be imposed where there was only a single instance of sexual violence and/or a single victim, as in this case, *Woodward*, and *L.M.* In addition, as this Court recognized in *L.M.*, maximum sentences should not be reserved for the "abstract case of the worst crime committed in the worst circumstances" (para. 22). Instead, a maximum sentence should be imposed whenever the circumstances warrant it... [Emphasis added]

[75] Balancing Mr. Hughes' age and health with the need to follow the recent and clear directions from the Supreme Court of Canada, the appropriate sentence for him in this case is six-years in custody.

Conclusion

[76] The message from Parliament and from the Supreme Court of Canada is crystal clear. Denunciation and deterrence are of paramount importance in

sentencing an adult for a sexual crime on a child, as the court is dealing with in this case. Mid-single digit penitentiary terms are to be the norm and upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances. Balancing against that direction is the fact that Mr. Hughes is 71 years old with some health issues.

[77] Mr. Hughes will be sentenced on the s. 151 charge of sexual interference to six-years in custody. He will also receive a sentence of six-years in custody for the s. 152 charge of sexual touching. The sentence in relation to the s. 152 charge will run concurrent to the sentence for the s. 151 charge. The s. 271 charge is stayed in keeping with *Kienapple* and the joint recommendation on this point by Crown and defence.

[78] I will also impose the three mandatory ancillary orders as suggested by the Crown, and agreed to by Mr. Hughes, which include: Primary DNA Order, s.109 Firearms Prohibition for 10 years, and SOIRA Order for life.

[79] I will impose the following discretionary order in accordance with s.161(1) of the *Criminal Code*, which states, in part:

> When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition

> to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from
>
> (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;
>
> (a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;
>
> (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;
>
> (c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate...

[80] I also impose a s.743.21(1) *Criminal Code* order prohibiting Mr. Hughes from having any communication with D.B.

Arnold, J.