SUPREME COURT OF NOVA SCOTIA
Citation: *R. v Wood*, 2021 NSSC 253

Date: 20210819
Docket: CRY No. 501145
Registry: Yarmouth

Between:

Her Majesty the Queen
v.
Christopher Paul Wood

Restriction on Publication: s.486.4CC

Judge:	The Honourable Justice Pierre Muise
Heard:	August 5, 2021, in Yarmouth, Nova Scotia Oral decision rendered August 6, 2021.
Counsel:	Josie McKinney, for the Crown Philip J. Star, Q.C., for Christopher Wood

Restriction on Publication: s.486.4CC

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

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

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

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

By the Court (Rendered Orally August 5, 2021):

[1] Christopher Paul Wood pled guilty to having: on April 21, 2020, possessed a firearm knowing he did not have a licence authorizing it (*Criminal Code* s. 92(1)); and, between March 25, 2020 and April 2, 2020, made child pornography (*C.C.* s. 163.1(2)) and touched KB, a person under the age of 16 years, for a sexual purpose, thereby committing sexual interference (*C.C.* s. 151).

[2] He is being sentenced in relation to those offences.

[3] I am rendering this decision orally. Should it be released in written form, I reserve the right to edit it for grammar, structure and organization, as well as to provide complete citations and references, without changing the reasoning or the result.

[4] I reiterate that there is a publication ban on the identity of the victim and any information that might disclose their identity.

[5] The Crown proceeded indictably on the sexual interference charge. Therefore, it carries a maximum penalty of 14 years' imprisonment. The 1 year minimum penalty has been declared unconstitutional by our Court of Appeal in **R. v. Hood**, 2018 NSCA 18. The making of child pornography is a straight indictable offence

with a maximum penalty of 14 years' imprisonment and a minimum penalty of 1 year. The firearm possession offence is a straight indictable offence with a maximum penalty of 10 years' imprisonment and, on a first offence, no minimum penalty.

Circumstances of Offences

[6] The circumstances of the offences are described in the agreed statement of facts which, in the interest of time I will not read, as counsel and the offender are well aware of its contents. However, it is to be marked as an Exhibit; and, if this decision is released in written form, I will anonymize and insert it, so that anyone reading the decision will be apprised of the facts. They will include the breach facts, but only for their use in assessing prospects of rehabilitation.

[7] The anonymized version of the agreed statement of facts states the following:

BACKGROUND

1. The Defendant and KB initially met through Snapchat in early 2020.
2. During the time of the offences, KB was in the permanent care of the Department of Community Services ("DCS"), which the Defendant knew.

3. During the time of the offences, the Defendant was 24 years old and KB was 15 years old. KB told the Defendant they were 15 years old when they initially began communicating.

SEXUAL INTERFERENCE

4. After chatting for a period of time, the Defendant asked KB to be his girlfriend and they agreed.

5. The Defendant and KB communicated with each other using SMS messaging, Facebook Messenger and Snapchat.

6. On two separate occasions, the Defendant communicated with KB using text messaging, to make arrangements to bring KB to his residence in Yarmouth, NS, for the purpose of spending time together, including engaging in sexual activities together. The Defendant was residing with his mother at the time.

7. On the first occasion, the Defendant arranged to pick-up KB with his friend, at KB's father's residence in a community in NS. They brought KB, by car, back to the Defendant's residence in Yarmouth, NS. During the drive, the Defendant provided KB with alcohol and marijuana.

8. On the first occasion, KB stayed at the Defendant's residence for at least two days, during which the following occurred:

- The Defendant provided KB with alcohol and marijuana.
- The Defendant penetrated KB's vagina with his fingers.
- The Defendant penetrated KB's vagina with his penis several times on each day, some of which was without a condom.

9. On the second occasion, the Defendant arranged to pick-up KB with his mother, across the road from the group home where KB was living. They brought KB, by car, back to the Defendant's residence in Yarmouth, NS.

10. On the second occasion, KB stated at the Defendant's residence for at least three days and the following occurred:

- The Defendant provided KB with alcohol and marijuana.
- The Defendant penetrated KB's vagina with his fingers.
- The Defendant penetrated KB's vagina with his penis several times on each day, some of which was without a condom.

11. No overt force was used by the Defendant when penetrating KB's vagina with his fingers and penis.

MAKING CHILD PORNOGRAPHY

12. The Defendant photographed and videotaped some of the incidents of sexual interference with KB

13. The Defendant also asked KB via Snapchat to provide him with photos of her vagina, which they did.

14. Two cellphones were seized from the Defendant by police during the course of this investigation. The following photos and videos were found on one of the cellphones:

- Two videos, taken March 29, 2020, of the Defendant penetrating KB's vagina with his fingers and having intercourse with them.
- Two videos, taken March 30, 2020, of the Defendant having intercourse with KB
- Three photos, dated March 31, 2020, showing a close-up of KB's vagina and anus.
- One photo, dated April 2, 2020, of KB nude, but their genitals and breasts are not visible.
- One photo, dated April 2, 2020, showing a close-up of KB's vagina.

- Six photos, dated April 5, 2020, showing a close-up of KB's vagina.
- One photo, dated April 5, 2021, showing the Defendant's penis penetrating KB's vagina.
- Photo collage dated April 15, 2020, of KB's face and close-up of their vagina.

UNLICENSED POSSESSION OF A FIREARM

15. On April 21, 2020, officers from Yarmouth Rural RCMP Detachment executed a search warrant on the residence of the Defendant. In the Defendant's bedroom, officers located an unsecured 12-gauge shotgun under the bed, immediately next to the shotgun shells. Officers also located additional ammunition in the Defendant's bedroom.

16. On April 21, 2020, the Defendant did not possess a Possession and Acquisition License issued under the *Firearms Act* and he knew he did not possess such a license at the time he possessed the shotgun.

BREACH OF A RELEASE CONDITION

17. On June 18, 2020, officers with the Yarmouth Rural RCMP Detachment responded to a request to locate a missing person, namely KB Officers

located KB and the Defendant together, near a tent in a wooded area in Wedgeport, NS.

18. At the time, the Defendant was bound by a release order with a condition that he not have contact with KB

Sentencing Recommendations

[8] The Crown recommends the following sentence:

- a total of 5 years' imprisonment;

- a SOIRA order for life;

- a DNA order;

- a s. 161 order (including clauses a, a.1, b and c) for 20 years;

- a s. 109 Firearms Prohibition Order; and,

- a forfeiture order for all items seized including the cellphones, gun and ammunition.

[9] The Crown highlights and relies upon the principles and guidelines for sentencings involving sexual offences against children laid out by the Supreme Court of Canada in **R v Friesen**, 2020 SCC 9. I will discuss the principles and guidelines which are relevant to the case at hand later.

[10] The Defence recommends 2 years' imprisonment in a federal institution, followed by a lengthy period of probation.

[11] It takes no issue with the ancillary orders requested except for the duration of the s. 161 order.

[12] The Defence acknowledges that **Friesen** may require an upward adjustment of sentences imposed in similar cases in the past. However, it notes that: the facts in **Friesen** were extremely disturbing and involved a very young child; and, even increasing the sentences imposed pre-Friesen, the resulting sentence would still fall within the range suggested by the Defence.

[13] Determining appropriate range of sentence requires the Court to consider the objectives and principles of sentencing.

[14] **Friesen** addressed them in detail as they relate to sexual offences against children, with particular emphasis on denunciation, deterrence, proportionality, and how parity relates to proportionality. Prior to applying the objectives and principles of sentencing to the case at hand, I will outline the relevant points from **Friesen**.

R. v. Friesen

[15] The main themes in **Friesen** are summarized at paragraph 5 as follows:

> …we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences

> that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.

[16] Those themes are expanded upon in **Friesen** as follows:

- Precedent cases provide the body of sentences that judges use to determine what is a proportionate sentence. When done in a consistent manner, it satisfies the principle of parity: paras 32 and 33.

- "Protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the *Criminal Code*": para 42.

- "[S]entencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause": para 50.

- "The prime interests that the legislative scheme of sexual offences against children protect are the personal autonomy, bodily integrity, sexual integrity, dignity, and equality of children": para 51.

- "This … requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against

children can cause serious emotional and psychological harm that … 'may often be more pervasive and permanent in its effect than any physical harm'": para 56.

- At paragraphs 57 and 58, the Court noted various forms of emotional and psychological harm resulting from such offences, and highlighted that they "are particularly pronounced for children".

- At paragraphs 60 and 61, it discussed the harm caused in the form of damage to the child's relationship with their families and caregivers.

- Paragraphs 62 to 64 describe the forms of harm that families, communities and society suffer. They include, among others:

    - Destruction of trust;
    - Feelings of guilt and powerlessness;
    - The financial and emotional costs of the child's need to recover and overcome behavioral challenges;
    - Resulting social problems;
    - Costs of intervention; and,
    - Medical costs.

- "Sexual violence against children is especially wrongful" because of their vulnerability: para 65.

- “Sexual violence has a disproportionate impact on girls and young women”: para 68.

- Indigenous people and other groups that are marginalized or discriminated against, including youth in the care of a government agency, are disproportionately impacted by sexual violence against children, and thus particularly vulnerable: paras 70 to 73.

- “[C]ourts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle”: para 75.

- In assessing the gravity of the offence, courts must “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”: para 76.

- These must also be considered in determining the offender’s degree of responsibility: para 87.

- The sexual exploitation of children, because of their vulnerability, and the interference with their sexual and psychological integrity, aggravates the wrongfulness: para 77 and 78.

- The fact that the victim is a child, and the offenders ought to know of the potential harm, increases their degree of responsibility: paras 88 to 90.

- Paragraphs 79 to 81 describe several potential forms of harm that can manifest themselves during childhood or only become evident in adulthood. Some can rob the child victim of their youth and innocence. Many result in relationship and trust challenges, fear, mental and psychological health issues, sleep disturbances, and anti-social or self-destructive behavior.

- At paragraph 84, the following is stated:

> … 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.

- Then, at paragraph 85, it is noted, however, that actual harm "is a key determinant of the gravity of the offence."

- Parliament has mandated that sentences for sexual offences against children must increase by: increasing maximum sentences where the child is under 16; and, requiring courts to give primary consideration to denunciation and deterrence where the victim is under 18: paras 95 to 103.

- Parliament's prioritization of denunciation and deterrence for sexual offences against children is reflective of their wrongfulness and the harm they can cause: para. 105.

[17] **Friesen**, at paragraph 110, stated that "Courts should … be cautious about relying on precedents that may be 'dated' and fail to reflect 'society's current awareness of the impact of sexual abuse on children'".

[18] **Friesen**, at paragraph 107, stated:

> We are determined to ensure that sentences for sexual offences against children correspond to Parliament's legislative initiatives and the contemporary understanding of the profound harm that sexual violence against children causes. To do so, we wish to provide guidance to courts on three specific points:
>
> (1) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
>
> (2) Sexual offences against children should generally be punished more severely than sexual offences against adults; and,
>
> (3) Sexual interference with a child should not be treated as less serious than sexual assault of a child.

[19] At paragraph 114, it stated:

> …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.

[20] At paragraph 116, it noted that Parliament signaled that sexual offences against children are to be punished more severely than those against adults. It did so by way of the same provisions discussed in relation to increasing sentences, plus those making abuse of persons under 18, and abusing a position of trust or authority, aggravating factors.

[21] At paragraphs 121 to 154, the Court discussed significant factors to consider in determining a fit sentence. They include the following:

1. The greater the risk of re-offence, the greater the emphasis that should be placed on the sentencing objective of separating the offender from society. Though rehabilitation is to be encouraged, because it offers long-term protection, it can occur through programming within the prison, while ensuring short-term protection.

2. An offender who abuses a position of trust should receive a lengthier sentence than one who is a stranger to the child because the breach of trust is likely to increase the harm and thus the gravity of the offence, and it is aggravating because it increases the offender's degree of responsibility.

3. Significantly higher sentences should be imposed on offenders who commit sexual violence against children on multiple occasions and for longer periods of time.

4. The age of the victim is a significant aggravating factor because dependency and vulnerability are more pronounced in younger children, which impacts both the gravity of the offence and the degree of responsibility.

5. There are several dangers in defining a sentencing range based on the specific type of sexual activity at issue. Significant harm can flow from all types of sexual acts. Friesen strongly cautions 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 hierarchy of physical acts. However, an elevated degree of physical interference is still an aggravating factor.

6. The child victim’s participation in the sexual activity is not a mitigating factor, nor even a relevant consideration at sentencing. It is an error of law to treat it as such, even though it

"may coincide with the absence of an aggravating factor, such as additional violence or intimidation. It would "undermine the wrongfulness of sexual violence against a child" by shifting blame to the victim, and ignore the fact that sexual offences are inherently violent. It is always the adult's "responsibility to refrain from engaging in sexual violence towards children". Breach of trust or grooming leading to the participation is an additional aggravating feature. Also, as stated at paragraph 153, and particularly relevant in the case at hand:

> "Adolescence can be a confusing and challenging time for young people as they grow and mature, navigate friendships and peer groups, and discover their sexuality. … [T]o exploit young teenagers during this period by leading them to believe that they are in a love relationship with an adult 'reveals a level of amorality that is of great concern'."

Purpose and Principles of Sentencing

[22] The purpose, objectives and principles of sentencing in ss. 718 to 718.2 CC are to be considered.

[23] Ss. 718 and 718.01 provide:

> 718. The fundamental purpose of sentencing is 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;

(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 and to the community.

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.

THE OBJECTIVES OF SENTENCING

[24] The objectives of denouncing unlawful conduct, and, deterring the offender and other persons from committing offences, are of paramount importance when dealing with sexual offences, especially when committed against a person under the age of 18. In the case at hand, the victim was only 15. Therefore, I am statutorily directed to give primary consideration to the objectives of denunciation and deterrence.

[25] Another objective is, where necessary, separating the offender from society. **Friesen** notes that "mid-single digit penitentiary terms for sexual offences against children are normal" and "substantial sentences can be imposed where there was only a single instance of sexual violence". In the circumstances of the case at

hand, proportionality, which I will discuss later, could easily require a sentence well into the penitentiary range, to give effect to proportionality, parity and the requirement that primary consideration be given to denunciation and deterrence.

[26] A further objective is to assist in rehabilitating the offender. Mr. Wood has accepted responsibility and his guilty plea indicates some remorse. However, there is no indication he has participated in, or even explored, sex offender assessment or counselling. That raises concerns regarding rehabilitation.

[27] It suggests a lack of interest in taking steps towards, thus diminishing the prospects of, a successful rehabilitation.

[28] In addition, the post-offence contact he had with the victim, in breach of his release conditions, for which he will soon be sentenced in Provincial Court, though not an aggravating factor, diminishes the likelihood of rehabilitation.

[29] Other objectives are: to provide for reparations for harm done to victims and the community; and, promoting a sense of responsibility in the offender, and acknowledging the harm done to the community. I will deal with these two objectives together.

[30] It may be that it is impossible in relation to the victim, and her family or caregivers. However, if so inclined, he might be able to work towards making

other people aware of the wrongfulness and harmfulness of his actions, so that they would refrain from engaging in similar behaviour.

[31] Unfortunately, no sentence imposed will provide true and full reparation for the inevitable harm caused to the victim by having her sexual integrity violated.

[32] There is no victim impact statement, and no other evidence of actual harm. However, I must take into consideration the reasonable potential for additional harm, that is not yet apparent to the victim, as expressed in **Friesen**, some of which I have already outlined.

[33] After being released on these and other charges with a condition to have no contact with KB, he was found with them near a tent in a wooded area, highlighting his lack of appreciation for the harm his actions caused.

[34] A sentence involving imprisonment can serve to acknowledge the level of harm done, not only to the victim themselves, but also to the community at large, and promote a corresponding sense of responsibility in the offender.

[35] He has accepted responsibility. However, as indicated, he has not pursued a sexual offender assessment, nor rehabilitative counselling. That indicates that he, likely, does not fully appreciate and acknowledge the level of harm done to the victim and the community.

[36] As indicated in **Friesen**, in addition to the detrimental impact upon the victim, these types of offences also have a detrimental impact on the victim's family, the community at large, and society in general.

[37] The common impact they can have on an individual victim, such as depression, anxiety, anger, low self-esteem, and other mental health difficulties, can flow over to the community at large in the way of, among other things, social issues requiring intervention, diminished productivity and higher health care costs.

[38] It leads to distrust and fear, for the victim and the community at large, limiting our sense of security and freedom. The victim in the case at hand lived in a group home. A 15-year-old resident having been able to leave such a home and join up with an adult for the purpose of having sexual relations, even though she was not picked up at the home, could reasonably result in tighter restrictions for all residents.

Other Sentencing Principles

[39] The following codified sentencing principles also apply:

> 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
>
> 718.2 A court that imposes a sentence shall also take into consideration the following principles:

> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> ....
>
> (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
>
> ....
>
> shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> ….
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders … .

Proportionality (s. 718.1)

[40] Given the circumstances, particularly of the sexual exploitation and production of child pornography offences, their inherent wrongfulness, and the potential harm that may surface, they are clearly very grave offences.

[41] The same points establish a high degree of responsibility in the offender. He had to know that committing such acts on a 15-year-old, in care of the Department of Community Services, and taking photos of it, would have a detrimental impact on them and the community.

[42] The victim was vulnerable because of their age, being in care and being Indigenous.

[43] He lured them by asking them to be his girlfriend, thus holding out the promise of a loving relationship, then supplied them with alcohol and marijuana.

[44] There is no evidence establishing a diminished level of capacity on the part of the offender which would show diminished responsibility.

[45] He acted alone in the illegal acts. There is no evidence establishing any other factors related to diminished responsibility. As such, he was solely and fully responsible for these offences.

Aggravating and Mitigating Circumstances in the Case at Hand

Aggravating Circumstances

The aggravating circumstances in the case at hand include the following:

- The offender abused a person under 18, a statutorily mandated aggravating factor under s. 718.2 (a)(ii.1).

- He has a prior criminal record, including for offences of violence. In 2013, he was sentenced to 1 year probation for an assault and trespassing at night.

In 2014, he was sentenced to a conditional discharge with 1 year probation for uttering threats. In 2017, the passing of sentence was suspended, and he was put on 1 year probation for uttering threats.

- The victim was vulnerable because they were in permanent care, in a group home, at a confusing age, and Indigenous.

- He gave them alcohol and marijuana.

- The offence involved repeated digital penetration and vaginal intercourse, including, at times, without protection, over multiple days, on two separate occasions. Those are highly intrusive acts with an elevated level of physical interference, which is an aggravating factor.

- He took videos of the intercourse and photos of KB's vagina and his penis penetrating it, as well as other pornographic photos of KB. He also kept them on his phone, with some he received from KB. Those I have described constitute child pornography in the second most serious of the five categories listed in **Missions v. R.**, 2005 NSCA 82. That case emphasized the exploitation of children involved in, and the harms caused by, child pornography. I emphasize that a victim never knows where such photos or

videos will end up or who will be able to access them. It is a victimization which can continue in perpetuity.

Mitigating Circumstances

The mitigating circumstances in the case at hand include the following:

- Mr. Wood entered guilty pleas. However, the Court was only informed there would be a guilty pleas 10 days before trial, on the day set for a Crown application to have the witnesses appear by video, and it was entered on the first day set for trial. As such, the victim had to deal with the emotional and psychological turmoil of expecting to have to testify, up to a relatively short time before trial. The mitigating effect of the guilty plea is somewhat diminished as a result. On the other hand, the guilty plea was entered without a joint recommendation on sentencing, which, as noted at para 70 of **R. v. McNutt**, 2020 NSSC 219, is "a strong and meaningful mitigating factor" which speaks to "real remorse, the acceptance of responsibility and the desire to save the victims from the harm of testifying". That has the effect of increasing the mitigating impact, but not as much as if the desire to enter a guilty plea had been expressed at an early stage, as was the case in **McNutt**.

- He was relatively youthful at 24 years of age, at the time of the offences, and is now only 25.

- As indicated, his guilty plea can be taken as an expression of remorse.

- He has been gainfully employed, mainly in fish processing.

- He has the strong support of his mother, with whom he lives.

Friesen Factors

[46] I will also address the relevant factors outlined at paragraphs 121 to 154 of **Friesen**, for determining an appropriate sentence for a sexual offence against a child, even though there is some overlap with points that I have already made in the course of discussing the objectives and principles of sentencing.

1. Mr. Wood has not taken any rehabilitative initiative. This increases the risk of re-offence and militates in favour of placing greater emphasis on separating the offender from society. Both short-term protection of the community and rehabilitative programming can be accomplished and accessed through a period of imprisonment.

2. Mr. Wood was a stranger to KB before they started their SMS messaging, Facebook messenger and Snapchat conversations shortly

before the offences. As such, the aggravating nature of a breach of trust, and the likelihood of increased harm associated with it, are absent in the case at hand.

3. Unfortunately, the sexual violence against KB was repeated over multiple days on two separate occasions. On the first occasion, it occurred several times per day over at least two days. On the second occasion, it occurred several times per day over at least three days. Therefore, the principle that a sentence increase should follow if the sexual violence had been committed on multiple occasions applies to the case at hand.

4. Though still a person under 16, and vulnerable for the reasons I have described, KB was less dependent and vulnerable than if she had been a younger adolescent or child.

5. As already indicated, the high degree of physical interference involved is an aggravating factor. It includes full, unprotected, vaginal intercourse, which has always been considered to be very serious. Therefore, there is little risk of the type of sexual act performed being improperly considered or treated as one less likely to cause harm, or its wrongfulness being downplayed. **Friesen** warned against that danger,

but it is not a danger that exists here. It is clear that significant harm can flow from it, like all types of sexual acts.

6. The fact that KB participated in the sexual acts is not mitigating and not legally relevant on sentencing. There is an absence of the aggravating feature of additional violence beyond the inherent sexual violence. However, Mr. Wood exploited KB by convincing them to be in an intimate relationship with him, thus offering the promise of love to a person in the permanent care of Community Services. He further lured them or broke down any opposition they may have by giving them alcohol and marijuana. Instead of fulfilling his responsibility to refrain from sexual activity with KB, he chose to exploit them while they were at a vulnerable age and in a vulnerable situation. That, to use the words in **Friesen**, "reveals a level of amorality that is of great concern".

Parity Principle (s. 718.2 (b))

[47] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This principle, of course, as submitted in the Defence brief, recognizes that no two cases are identical, and that the Court is not to take a cookie-cutter approach to sentencing.

[48] Counsel have provided multiple comparison cases.

Defence Cases

[49] I will start with the cases presented by the Defence.

[50] The following are all pre-Friesen cases:

1. **R. v. Scofield**, 2019 BCCA 3
2. **R. v. J.G.**, 2017 ONCJ 881
3. **R. v. D.G.P.**, 2009 BCPC 171
4. **R. v. C.F.Y.**, 2019 NSSC 178
5. **R. v. Blinn**, 2018 NSPC 32
6. **R. v. Goodwin**, (June 23, 2014) Yarmouth Case # 2585735 (NSPC)

[51] They are of little or no assistance in determining parity because the approach to assessing proportionality is inconsistent amongst the cases and inconsistent with the directions and principles laid out in **Friesen**. As such, as already noted from **Friesen**, they cannot be relied upon to satisfy the principle of parity. **R. v. Lemay**, 2020 ABCA 365, dealing with a luring offence, at paragraph 51, stated that it is an error to rely on such earlier cases.

[52] The Defence also advanced the following post-Friesen cases:

1. **R. v. Williams**, 2020 BCCA 286

2. **R. v. Fisher**, 2020 NSSC 325

3. **R. v. Lemay**, *supra*

[53] **R. v. Williams** exemplifies the inappropriateness of relying on pre-Friesen sentencing cases. In **Williams**, the trial judge had imposed a 3.5 year sentence for sexual interference committed on M.B., and 4 years for the same offence committed against N.D., with each being reduced by 6 months following consideration of the totality principle. The Court of Appeal had reduced the net total sentence to four years (i.e. 1.5 years for the offence involving M.B. and 2.5 years consecutive for the offence involving N.D.). The Crown appealed to the Supreme Court of Canada which referred the matter back to the British Columbia Court of Appeal "for disposition in accordance with" **Friesen**. Following the hearing of the appeal afresh, though the Court of Appeal found that the trial judge had erred in failing to consider as mitigating the offender's mental health and personal circumstances, the Court of Appeal, following the new analytical framework in **Friesen**, concluded that the sentence imposed by the trial judge was fit.

[54] The Defence submitted that the circumstances in **Williams** were significantly more serious than those in the case at hand. In relation to M.B., it highlighted that

the offender exploited her vulnerabilities through domineering and controlling conduct, viewing her as his slave who would have to do what he wanted her to.

[55] If the court had only been dealing with the offence involving M.B., the principle of totality would not have come into play, the sentence would have been one of 3.5 years' imprisonment. The circumstances in relation to M.B. were very close to the circumstances in the case at hand. The aggravating circumstances involving M.B. are listed at paragraph 7 of **Williams** as follows:

> The judge identified a number of aggravating factors: (i) the offence itself, which s. 718.2(ii.1) of the Code statutorily mandates as an aggravating factor; (ii) Mr. Williams's continuing sexual relationship with each of the victims after learning of their actual ages, which the judge characterized as predatory; (iii) engaging in multiple acts of sexual intercourse with each of the victims …; … (v) conducting himself in an "overbearing, dominant and in some ways threatening [manner] toward both girls", by which he exploited their vulnerability and exacted an emotional and psychological toll on each of them; … (vii) violating the bail condition imposed on the N.D. charge that he not be in contact with any minors by continuing his relationship with M.B.; (viii) posing a moderate risk to reoffend and "appear[ing] ambivalent about getting treatment and help to ensure that he does not reoffend."

[56] Except for conducting himself in an overbearing, dominant and threatening manner towards KB, Mr. Wood's actions bring into play all of those other aggravating factors. Plus, he exploited KB's vulnerability in the other ways that I've already noted. We do not have a victim impact statement to determine any actual emotional and psychological toll on KB. However, it can reasonably expected that such harm has resulted, or will result. Both Mr. Williams and Mr. Wood entered guilty pleas.

[57] Mr. Williams' personal circumstances were significantly more mitigating than are Mr. Wood's. They are outlined at paragraphs 16 to 35 of **Williams** and include the following:

1. He had no criminal record.

2. His mother attempted suicide when he was an infant. His father committed suicide when he was eight years of age.

3. "His mother was emotionally and physically abusive to him. She left him alone for long periods of time while she was working. He had to get himself ready for school on his own and he had to cook for himself.

4. His mother remarried when he was 12 years of age and his stepfather was abusive and controlling towards him.

5. He ran away from home at age 13, following a physical altercation with his mother and never returned.

6. Between the ages of 13 and 19 he was homeless. During that time he experienced hardship, which included being beaten and raped.

7. Nevertheless, he finished school and earned a trade.

8. He did not have a substance abuse problem and was not otherwise involved in criminal behaviour.

9. His paternal grandparents were supportive of him and would provide him a home.

10. He suffered from multiple mental health issues and demonstrated some insight into them.

11. While in custody, he had been "punched in the face, bullied and harassed by other inmates, eventually asking to be moved to a different unit because of personal safety concerns". He "was afraid to go to sleep out of fear that he would be physically or sexually assaulted".

12. He became very depressed and displayed symptoms of PTSD.

[58] The greater mitigating features in **Williams** counterbalance the slightly diminished aggravating circumstances in the case at hand. Therefore, the British Columbia Court of Appeal concluding that a 3.5 year sentence for Mr. Williams' sexual interference of M.B. supports a similar range for Mr. Wood.

[59] In **R. v. Fisher**, a 29-year-old church pastor, abusing his position, engaged in sexual activity with a 17-year-old church member, over 5 months, until she turned 18. The church was the centre of her life. The offences included kissing, touching, digital penetration, oral sex and sexual intercourse. He knew she was vulnerable and experiencing problems at home and at school. Since he had been acting as her

mentor and spiritual advisor, “psychological torment … accompanied the sexual exploitation” and the victim lost fate in God, which had been very important to her. The pastor was sentenced following conviction. The Court imposed a 27-month sentence, and would have imposed a three-year sentence, but for the mitigating features. They included: the lack of a criminal record; that he was a contributing member of society who volunteered extensively; he had significant support from family and friends; he led a largely prosocial life; he had undergone counselling and indicated a willingness to attend further counselling; he had furthered his education since being terminated from his position at the church; he had worked hard since leaving Jamaica to attain considerable educational success; and, he had no substance issues and substance was not a factor in the offence. There was also a Cultural Impact Assessment prepared which noted the impacts of race and culture on the offender, including: historical and contemporary systemic racism; poverty as it relates to cultural expectations and social/emotional development; impacts of cultural codes on mental wellness; the over-representation of African Canadians in prison; and, services and resources that should be made available to the offender to support rehabilitation and reintegration.

[60] In the case at hand, Mr. Wood pled guilty and was not in a position of trust. However, he exploited KB in the other ways I have already described. KB was two years younger than the victim in **Fisher**. We do not have evidence of actual harm to KB. However, it is reasonable to expect harm. Mr. Wood: has a criminal record; did not volunteer extensively; has much less community support than Mr. Fisher did; has not undergone counselling; has not lost a position because of these offences; and, has not experienced similar impacts of race and culture. In addition, the acts committed by Mr. Wood involve the same level of intrusiveness.

[61] Therefore, a higher sentence than that imposed on Mr. Fisher would be fit and proper in the circumstances of the case at hand.

[62] In **Lemay**, following guilty pleas, the judge imposed a sentence of 30 months' imprisonment for sexual interference and 12 months' imprisonment consecutive for luring. The Court of Appeal found that the sentencing judge had erred in failing to find a trust relationship. It substituted a sentence of four years for sexual interference and 18 months consecutive for luring. In that case, the offender was a 35-year-old, who was a friend of the 15-year-old victim's father and worked with him. The victim referred to him as uncle. There were five incidents of sexual activity involving touching the victim's breasts, digitally penetrating her, and having her fellate him and ejaculating into her mouth. One incident involved

attempted vaginal intercourse which was discontinued because it caused pain. There was a victim impact statement describing significant actual harm, which we do not have in the case at hand. Similar to the case at hand, the offender had acquired photographs of the victim's genitalia. Mr. Wood was not in a position of trust. However, the sexual activity involved was somewhat more intrusive. Also, Mr. Lemay benefited from various mitigating features which do not obtain in the case at hand. They included: *Gladue* factors; lack of prior record; and an assessment indicating a motivation to change. Considering these points, **Lemay** supports the imposition of a sentence on Mr. Wood for sexual interference approaching that imposed in **Lemay**.

Crown Cases

[63] The comparison cases presented by the Crown include:

1. **R. v. Lemay**, *supra*
2. **R. v. Crane**, 2021 PESC 1
3. **R. v. Storey**, 2021 ONSC 1760
4. **R. v. E.F.**, 2021 ABQB 272
5. **R. v. Safieh**, 2019 ONSC 287

[64] I have already discussed **R. v. Lemay**.

[65] In **R. v. Crane**, the offender pled guilty to sexual interference. The activity forming the basis of the effences had occurred when he was 35 and 36 years of age and the victim was 14 and 15 years of age. He was her music teacher, having been hired by her parents for that purpose. He groomed her for sexual contact of increasing intrusiveness. It escalated to unprotected vaginal intercourse with internal ejaculation. Despite being warned that people were referring to him as a pedophile, he continued to regularly create opportunities to have unprotected vaginal intercourse with the victim. Like the case at had, he led the victim to believe he cared for her and wanted a meaningful relationship with her. He had to resign from the theatrical group he worked for. He had no prior record or involvement with the criminal justice system. Despite having entered a guilty plea, when interviewed for the presentence report, he denied wrongdoing. Victim impact statements revealed significant harm to the victim and her family. He was sentenced to six years' imprisonment. The extreme breach of trust, the evidence of actual harm, the level of frequency and duration of sexual contact, and the more sophisticated grooming, that existed in **Crane** does not obtain in the case at hand, and Mr. Crane's case does not have significantly more mitigating features. Therefore, **Crane** does not support the imposition of a six year sentence in the case at hand. However, given the comparable level of intrusiveness, and that Mr.

Wood also lured KB, a vulnerable person, by the promise of an amorous relationship, it does support a significant sentence for Mr. Wood.

[66] In **Storey**, the Court agreed that a sentence of 4 to 5 years for sexual interference by 21-year-old on a 13-year-old was a fit and proper sentence. He then reduced it to 45 months to account for remand credit. The two were in a relationship that advanced quickly to full sexual intercourse on multiple occasions without protection. The offender was on a disability pension program due to intellectual disability. However, the court did not find that it reduced his moral blameworthiness. On the other hand, he was a good prospect for rehabilitation as he had a long history of willing participation in counselling and therapy. The Court, at paragraph 44, interpreted the direction in **Friesen** that a mid to upper single-digit sentence will be appropriate even for a first offender having been involved in a single incident as meaning five years. Comparing the circumstances in **Storey**, to those in the case at hand, it supports a similar sentence in the case at hand as being within an acceptable range, but reduced somewhat to account for Mr. Wood's guilty plea, as Mr. Storey was convicted following trial.

[67] In **R. v. E.F.**, the offender was convicted following trial of sexual interference and luring by telecommunication. The court sentenced him to four years' imprisonment.

[68] He was 48 years of age at the time. The victim was 15. He had met her on an Internet messaging application. He travelled to her area for business and met up with her in a hotel after exchanging a large number of sexually explicit messages with her. He engaged in unprotected vaginal intercourse, and, after leaving the hotel for a while returned for further sexual relations which were interrupted by the police locating him there. The court's view of his behaviour is described at paragraph 71 as follows:

> EF preyed on AB's clear vulnerability. He located her easily using the Chat Hour app. He knew that she was 15 years old. He knew that she had very significant personal problems, and that she was not living with either of her parents, but was living in a group home – a facility which attempts to help troubled youth. The depth of her vulnerability was clear given her eager acceptance of the opportunity to meet with him, to have sex with him, and to stay in a hotel with him without any coercion. The evidence at trial established that EF's only purpose was to use AB for his own sexual gratification. The lurid and depraved content of the messages he sent to her in the two days before they met can admit of no other conclusion.

[69] The court did not find that there was a sufficient likelihood of re-offence to constitute an aggravating factor. It found that there was no breach of trust. It was a not a situation of sexual violence committed on multiple occasions. Though the victim being 15 made the power imbalance less than if she had bit younger, there was an age gap of more than 30 years. The offender suffered from mental health issues at the time, and his rights to counsel had been breached on arrest, which constituted mitigating factors. It was aggravating that he gave the victim alcohol and did not use a condom.

[70] The circumstances of the **E.F.** case, overall, are very similar to those in the case at hand. If anything, they could be said to be slightly less serious. Therefore, the case does support a sentence nearing four years imprisonment as being in an acceptable range for Mr. Wood, but, again, reduced somewhat to account for Mr. Wood's guilty plea, and also reduced somewhat to account for the much smaller gap in age.

[71] The **Safieh** case involved a sentencing for producing child pornography. The 20-year-old offender had procured a 14-year-old female and a 16-year-old female to work as prostitutes and taken photos of them in various stages of undress. The court imposed a sentence of one year for each offence, consecutive, which is the minimum sentence under section 163.1 (2). That is the sentence recommended by the Crown in this case.

[72] The Court in **R. v. S.J.M.**, 2021 NSSC 235, found that the production of child pornography offence warranted a 3-year sentence, with the range applicable to that case, being 2 to 4 years. In that case the police were able to unlock hundreds of pornographic images of the offender's stepdaughter who he had committed extreme sex acts on from the ages of 12 to 17. Some were screenshots of videos. On Mr. Wood's phone, they found 4 videos, 12 photos, plus a photo collage, all dated within a span of about two weeks. Plus, the victim in the case at hand was

not in the care of Mr. Wood, and he was not in any position of trust in relation to them. In comparison, a one-year sentence is justifiable in the case at hand.

[73] **Friesen** itself was also referred to by the Defence as a comparison case while emphasizing that it involved more disturbing circumstances.

[74] In Friesen, the 29-year-old offender pled guilty to sexual interference and attempted extortion. He and the victim's mother were engaging in sexual intercourse. He told her to bring her four-year-old daughter into the bedroom so that they could force their mouths onto her vagina and so that he could force his penis into her vagina. The mother brought the child into the bedroom and laid her naked on the bed. The child cried and tried to flee. They prevented her from escaping. As she was screaming he directed the mother to force her head down so that he could force his penis into her mouth. The child's screams awoke the mother's friend. She entered, observed the violence and removed child. He then threatened that, if the mother did not bring the child back, he would say that she had sexually abused her one-year-old son. She was trying to get one of her children back from the child protection agency at the time. The offender added that he intended to rape the child while she cried.

[75] He had no prior record. He had experienced neglect and physical, as well as sexual, violence as a child. He became homeless and sold sex on the street to

survive. He suffered from depression and anxiety. He expressed a desire to attend counselling and was remorseful. However, he was at a high risk to reoffend. He reported being under the influence of alcohol and having blacked out at the time of the offences. Yet, he maintained that alcohol use was not a problem, and he had no strategies in place to mitigate future risk. The Supreme Court of Canada restored the sentence imposed by the trial judge, which was 6 years' imprisonment for the sexual interference, and a concurrent 6 year sentence for the attempted extortion.

[76] The circumstances of the offence were much more extreme than those in the case at hand, and involved a much younger victim. Like the case at hand, the offender was a not in a position of trust in relation to the child. Instead, he used the child's mother, who was in a position of trust, to attempt to provide him access to the four-year-old child. In the case at hand, Mr. Wood used other vulnerabilities to gain access to KB. Mr. Friesen's difficult childhood and life, as well as his mental health issues, provided additional mitigating factors that do not obtain in the case at hand. On the other hand, the fact that he coordinated sexual violence against the child by two people, is an aggravating factor that does not obtain in the case at hand. There was not only the harm to the child to consider, the manner in which the offence unfolded also imported potential or actual harm

to the mother, above and beyond that which can be expected when the child is sexually victimized without the parents' involvement.

[77] I agree with the Defence that the circumstances in Friesen are sufficiently distinct that they do not support a sentence as high as 6 years in the case at hand.

Restraint (s. 718.2 (d) & (e))

[78] I have considered the principle that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[79] In my view, no sanction less restrictive than imprisonment is appropriate in the case at hand. However, the principle of restraint still applies in determining an appropriate length of sentence.

SENTENCE

[80] Considering the directions in **Friesen**; the objectives, principles and factors that I have noted; the comparison cases; and the circumstances of the case at hand, I find that a fit and proper length of sentence is: for the sexual interference, three years and six months' imprisonment; for the offence of making child

pornography, one year imprisonment; and, for the firearm offence one month imprisonment.

[81] A conditional sentence order is not available as a sentence of less than 2 years would not satisfy the objectives and principles of sentencing, and serving his sentence in the community would not be "consistent with the fundamental purpose and principles of sentencing" set out in sections 718 to 718.2 of the *Criminal Code*. Therefore, a conditional sentence, or sentence to be served in the community, is not a fit sentencing option.

[82] The firearm offence has nothing to do with the other offences. Therefore, it is clearly to be consecutive.

[83] The making of child pornography occurred with and around the sexual interference offence. However, it did not strictly form part of the same single criminal adventure. It was a separate and additional criminal act, with its own set of additional harms and potential harms. In **Safieh**, the photos were taken as part of the prostitution operation for which the offender procured the victims. However, the Court imposed consecutive sentences for the production of child pornography offences. There is at least as much reason to do so in the case at hand. In addition, the Court in **R. v. S.J.M.**, *supra*, at paragraph 92, relying on *R. v. J.S.*, 2018 ONCA 675, and on **Friesen**, stated: "The law is clear that generally

this criminal misconduct justifies a consecutive sentence." Therefore, the sentence for the child pornography production is to be consecutive as well.

[84] Before considering the principle of totality, that would result in a combined sentence of 4 years and 7 month's imprisonment.

[85] R v Adams, 2010 NSCA 42, with references omitted, outlined the proper approach to applying the totality principle as follows:

> "23 In sentencing multiple offences, this Court has, almost without exception, endorsed an approach to the totality principle consistent with the methodology set out in C.A.M., ... The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced. ...

[86] I find that, in the circumstances, a total sentence of 4 years and 7 months is in an acceptable range. It is not an unduly long and disproportionate sentence. Therefore, it is not to be reduced.

[87] The breakdown will be as noted, with all sentences being consecutive to any sentence being served and to each other.

[88] It amounts to a total of 1,673 days, broken down as follows: 1,278 days for the sexual interference; 365 days for the production of child pornography; and, 30 days for the firearm possession offence.

[89] It is agreed that Mr. Wood spent at total of 14 days in pre-sentence custody; and, that he should receive credit for that at a rate of 1.5 to 1, for a total credit of 21 days. For the purposes of breaking down the sentence for each offence, the 21 days are to be credited against the 30 days for the firearm possession offence. As indicated, the total term of imprisonment that I would have imposed for these offences, before any presentence credit is 1,673 days. For the offender's 14 days of presentence custody I credit the offender with 21 days. Therefore, the resultant sentence is 1,652 days broken down as outlined above, except that the resultant sentence for the firearm possession offence is 9 days instead of 30. As stated, the sentences related to all charges are consecutive to each other and to any sentence he may be serving.

[90] So, I sentence you, Mr. Wood, to a total of 1,652 days' imprisonment, consecutive to any sentence you may be serving.

Ancillary Orders

[91] Subject to disputing the proposed length of the s. 161 order, the Defence did not object to any of the recommended ancillary orders.

[92] In relation to the DNA order requested, sexual interference and production of child pornography offences are primary designated offences in subsection (a) of

definition in s. 487.04. Therefore a DNA order is absolutely mandatory. There is no discretion to decline to make the order on the basis of grossly disproportionate impact. So a DNA order will issue.

[93] There is a request for a s. 109 Firearms Prohibition Order. It is mandatory for a minimum period of 10 years, and for some specified items, for life. The case at hand does involve a firearm possession offence. However, there is no indication that anyone was endangered by that possession, beyond the police not being able to verify him as authorized to possess one. There is no indication Mr. Wood was subject to any prior firearms prohibition. In the circumstances of this case, there is no need to extend the prohibition past the 10 year minimum. Therefore, as required by s.109, I grant the s.109 Prohibition, starting today and ending 10 years after his release from imprisonment, in relation to the items listed in s.109(2)(a), and, also as required by s.109, for life in relation to items listed in s.109(2)(b).

[94] There is a request for a SOIRA Order. S. 151 and s. 163.1 offences are designated offences under s. 490.011(1)(a). Pursuant to s. 490.013 (2.1), the SOIRA order is to be imposed for life because he is being sentenced for more than one designated offence.

[95] The Crown is also seeking a s. 161 order including clauses a, a.1, b and c, for 20 years. Those clauses provide for 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

[96] The Defence is not opposed to the order. It merely submits that it should be for a shorter period of time. The Court in **R. v. S.J.M.** imposed a s. 161 order to end 7 years after the offender's release from imprisonment, in circumstances that were more disturbing than those in the case at hand, happened over a longer period, and involved abuse of a step-daughter. Mr. Wood is only 25 years of age. He can be expected to mature more in the years to come. In comparison with **S.J.M.**, the imposition of a s. 161 order to end 5 years after his release from imprisonment would be fit and appropriate

[97] In the case at hand, Mr. Wood communicated using SMS messaging, Facebook Messenger and Snapchat. **Friesen**, at paragraphs 46 to 49, expressed concern that such technologies give sex offenders easy access to victims to manipulate and exploit them, and that online distribution of child pornography can propagate the associated harm forever. Despite that, the Crown has been fair in not seeking a

prohibition from using the internet or other digital network, taking the view that the prohibition from contact and communication will be sufficient. I agree that an internet prohibition is not required. I find the s. 161 order requested is fit and proper in the circumstances, and impose it, with a termination date 5 years after his release from imprisonment. The prohibition under s. 161 (a.1) will prohibit Mr. Wood from being within two kilometres of any dwelling-house where the victim ordinarily resides and of any place where they attend for education.

[98] The order should also specify that the Court considers any responsible adult aware of the offences for which Mr. Wood is being sentenced today to be appropriate to supervise contact or communication with a person under 16.

[99] The Crown seeks a forfeiture order in relation to all of the items seized, including two cell phones, a firearm and ammunition. The Defence is not opposed to the request. The child pornography was found on one of the cell phones. Thus it was clearly used in the commission of the child pornography offence. The other was used to communicate with KB to arrange to meet for the sexual encounters. That makes it offence-related property as it is related to the commission of the offence of sexual interference. The firearm was the subject matter of the offence of possessing a firearm knowing he was not the holder of a licence authorizing him to do so, and the ammunition was associated with it, or related to it.

Therefore, pursuant to s. 164.2, s. 490.1 and s. 491of the *Criminal Code*, I order that they be forfeited to Her Majesty the Queen in Right of the Province of Nova Scotia to be disposed of or otherwise dealt with in accordance with the law by the Attorney General of Nova Scotia. For greater clarification, the s. 164.2 forfeiture applies to the cell phone containing the child pornography, the s. 490.1 forfeiture applies to the other cell phone, plus the ammunition, and the s. 491 forfeiture applies to the firearm.

[100] After the Supreme Court of Canada, in the case of **R. v. Boudreault**, 2018 SCC 58, declared s. 737 of the *Criminal Code* (i.e. the victim surcharge provision) unconstitutional, it was revised to make it Charter-compliant. The revised version has not been challenged. S. 737(2.1) gives the Court discretion to order no victim surcharge, or a reduced one, if the surcharge would cause undue hardship to the offender. There is also another enumerated ground that is not relevant to the case at hand. S. 737(2.3) provides that imprisonment alone does not constitute undue hardship. It requires, under subs. (2.2), inability to pay.

[101] In the case at hand, no fines are to be imposed, and all offences are indictable. Therefore the surcharge would be $200 per offence, for a total of $600. Mr. Wood does not have the ability to pay that amount as he has no income. Therefore, I waive the imposition of the $600 victim surcharge.

[102] The remaining charges are dismissed, with the Crown's confirmation of want of prosecution, and on Defence's motion to dismiss.

Pierre Muise, J.