SUPREME COURT OF NOVA SCOTIA
Citation: *R v Shaw*, 2023 NSSC 411

Date: 20231220
Docket: 509814
Registry: Halifax

Between:

His Majesty The King

Plaintiff

v

John Huey Stanley Shaw

Defendant

Sentencing Decision

Restriction on Publication: s. 486.4 & 486.5 of the *Criminal Code*

Judge:	The Honourable Justice John A. Keith
Heard:	December 14, 2023, in Halifax, Nova Scotia
Final Written Submissions:	December 7, 2023
Counsel:	Cory Roberts, for the Crown Carbo Kwan, for the Defendant

486.4(1) Order restricting publication — sexual offences

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section
151, 152, 153, 153.1, 155, 160, 162, 162.1, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

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

(iii) [Repealed 2014, c. 25, s. 22(2).]

(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).

486.4(2) Mandatory order on application

In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) as soon as feasible, inform any witness under the age of 18 years and the victim of the right to make an application for the order;

(b) on application made by the victim, the prosecutor or any such witness, make the order; and

(c) if an order is made, as soon as feasible, inform the witnesses and the victim who are the subject of that order of its existence and of their right to apply to revoke or vary it.

486.4(2.1) Victim under 18 — other offences

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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

486.4(2.2) Mandatory order on application

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

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

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

(c) if an order is made, as soon as feasible, inform the victim of the existence of the order and of their right to apply to revoke or vary it.

486.4(3) Child pornography

In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

486.4(3.1) Inquiry by court

If the prosecutor makes an application for an order under paragraph (2)(b) or (2.2)(b), the presiding judge or justice shall

(a) if the victim or witness is present, inquire of the victim or witness if they wish to be the subject of the order;

(b) if the victim or witness is not present, inquire of the prosecutor if, before the application was made, they determined if the victim or witness wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (3.2).

486.4(3.2) Duty to inform

If the prosecutor makes the application, they shall, as soon as feasible after the presiding judge or justice makes the order, inform the judge or justice that they have

(a) informed the witnesses and the victim who are the subject of the order of its existence;

(b) determined whether they wish to be the subject of the order; and

(c) informed them of their right to apply to revoke or vary the order.

486.4(4) Limitation

An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is the subject of the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by an order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that other person.

486.4(5) Limitation — victim or witness

An order made under this section does not apply in respect of the disclosure of information by the victim or witness when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made

to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness.

Amendment History

2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b); 2010, c. 3, s. 5; 2012, c. 1, s. 29; 2014, c. 25, ss. 22, 48(6); 2015, c. 13, s. 18(1), (2), (4); 2019, c. 25, s. 190; 2023, c. 28, s. 2

486.5(1) Order restricting publication — victims and witnesses

Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

486.5(2) Justice system participants

On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

486.5(2.1) Offences

The offences for the purposes of subsection (2) are

(a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

486.5(3) Limitation

An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is the subject of the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by an order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that other person.

486.5(3.1) Limitation — victim, etc.

An order made under this section does not apply in respect of the disclosure of information by the victim, witness or justice system participant when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim, or witness or justice system participant.

486.5(4) Application and notice

An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

486.5(5) Grounds

An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

486.5(5.1) Duties — judge or justice

If the prosecutor makes an application for an order under subsection (1) or (2), the judge or justice shall

(a) if the victim, witness or justice system participant is present, inquire of them if they wish to be the subject of the order;

(b) if the victim, witness or justice system participant is not present, inquire of the prosecutor if, before the application was made, they determined whether the victim, witness or justice system participant wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (8.2).

486.5(6) Hearing may be held

The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

486.5(7) Factors to be considered

In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

486.5(8) Conditions

An order may be subject to any conditions that the judge or justice thinks fit.

486.5(8.1) Supplementary duty — judge or justice

If an order is made, the judge or justice shall, as soon as feasible, inform the victims, witnesses and justice system participants who are the subject of that order of its existence and of their right to apply to revoke or vary it.

486.5(8.2) Duty to inform

If the prosecutor makes the application, they shall, as soon as feasible after the judge or justice makes the order, inform the judge or justice that they have

(a) informed the victims, witnesses and justice system participants who are the subject of the order of its existence;

(b) determined whether they wish to be the subject of the order; and

(c) informed them of their right to apply to revoke or vary the order.

486.5(9) Publication prohibited

Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

Amendment History

2005, c. 32, s. 15; 2015, c. 13, s. 19; 2023, c. 28, s. 3

By the Court:

INTRODUCTION

[1] By Indictment dated October 5, 2021, John Huey Stanley Shaw was charged with seven (7) counts of sexual abuse against three separate complainants, all of whom were children at the time of the offences.

[2] After trial, Mr. Shaw was found guilty of the following five (5) crimes:

1. As against the victim, JB:

    a. sexual assault contrary to section 271 of the *Criminal Code* (count 5)

    b. sexual interference for a sexual purpose, contrary to section 151 of the *Criminal Code*. (count 6).

    JB was 11 years old at the time of the offences.

2. As against the victim, RS, who was six (6) years old at the time of the offence:

    a. Sexual assault contrary to section 271 of the *Criminal Code*.

    b. Sexual interference for a sexual purpose, contrary to section 151 of the *Criminal Code*.

    RS was 6 years old at the time of the offences.

3. As against the victim, MA, assault contrary to section 266 of the *Criminal Code*.[1] MA was 8 years old at the time of the offences.

[3] The trial decision is reported at 2023 NSSC 152.

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[1] Mr. Shaw was accused of sexually assault M.A. contrary to section 271 of the Criminal Code and also sexual interference as against MA contrary to section 151 of the Criminal Code. I acquitted Mr. Shaw of these charges but found him guilty of assault, a lesser but included offence.

[4] This decision seeks to impose a fit, proper, and just sentence for these criminal acts.

[5] The are several preliminary realities that, although self-evident, should be fortified in words when the Court is forced to confront cases such as these.

[6] The need to protect and nurture children is a fundamental, elemental component of our shared humanity. It is etched into our conscience and engraved into the bedrock of our most basic societal values. We became bound to this impulse before it was written in any code. It is as grounded in genetics and primordial morality as it is in law.

[7] For this reason, among others, crimes of sexual violence against children are so acutely unsettling and shocking. They represent a dark and powerful attack on the foundations of the human experience, with shockwaves that ripple out well beyond the actual event in time, in place, and in the names of people who may be negatively affected. The mere thought of exploiting and sexually violating our most innocent and vulnerable elicits a response that is so justifiably visceral that denunciation and deterrence easily emerge as the key priorities in sentencing. We seek, but often struggle to find, the possibilities for redemption in such matters that are neither easily forgotten nor quickly healed.

[8] These were some of the key messages which emerge from the Supreme Court of Canada's recent decision in *R* v *Friesen*, 2020 SCC 9 where the Court spoke at length on the destructive impact of sexual violence against children and how actions which originate in a disturbingly personal violation reverberate beyond the immediate victims and infect society at large (at paragraphs 46 – 72). It was in this same decision that the Supreme Court recognized Parliament's commitment and the judiciary's corresponding determination to ensure that the sentence for these types of crimes reflect our understanding as to the profound harm caused by sexual abuse of children (at paragraphs 1, 5 and 50).

[9] Obviously, there is no joy in moments like these, however, the Court still searches for justice in the form of a sentence that is fit and proper.

CIRCUMSTANCES OF THE OFFENCE

[10] Lori Belzan owned a Daycare in Fall River. The building where the Daycare operated was also Ms. Belzan's home.

[11] In about 2010, she hired Mr. Shaw to paint her home. Their relationship deepened. Mr. Shaw moved in with Ms. Balzan and, eventually, they had a child together.

[12] Mr. Shaw moved from being a professional painter to working full time at the Daycare.

[13] The Daycare accepted children who were pre-school aged and children who attended the elementary school located just down the street. Generally speaking, the children arrived at about 7:30 a.m. and would be picked up between about 2:30 p.m. and 4:30 p.m. The younger, pre-school aged children remained in the lower level, finished basement designed as a space suitable for children. The older, school-aged children were allowed on the upper level to watch television, play games, or complete art projects.

[14] For part of the day, while the older children were in school, Mr. Shaw and Ms. Belzan worked together with the pre-schoolers. However, they would divide up when the school-aged children returned. That routine was disrupted somewhat between 2016 – 2018 because Ms. Belzan suffered from kidney stones and was frequently hospitalized. Her ability to work in the Daycare was impaired. During this time, another worker named Joanne helped at the Daycare. However, Joanne left the Daycare at around Christmas 2019.

RS

[15] RS was a school aged child enrolled at the Daycare.

[16] On multiple occasions, Mr. Shaw lured RS into the small kitchen area on the lower level. He then slipped his hand under RS's pants and touched her (skin to skin) on her vagina and buttocks. He would wriggle his finger beneath her underwear and along her vagina.

[17] He used candy as a reward so that RS might quietly endure and, sadly in her childlike innocence, even misperceive his sexual advances as friendship. He twisted his desire for the privacy needed to commit these sexual crimes by telling RS that she was "special" and that they must keep these moments a secret, so that the other children would not resent the fact that RS received additional candy and attention from Mr. Shaw.

[18] As an ugly testament to Mr. Shaw's cynical and opportunistic methods, RS sadly came to "love" (her words) Mr. Shaw and actually tried to protect from his own abusive conduct. RS's devotion only innocently exposed the insidious nature of Mr. Shaw's actions. Unable to recognize that Mr. Shaw was cynically exploiting her trust and friendship, RS testified that Mr. Shaw's crimes eventually came to feel, in her words, "normal".

JB

[19] JB was also an accomplished, disciplined athlete (Tae Kwon Do) who has many other interests beyond this proceeding.

[20] JB had an affection for the Daycare and Ms. Belzan in particular. JB's mother died when she was about three years old, and Ms. Belzan came to become a bit of a mother figure for JB. Indeed, JB attended the Daycare for many years, sometimes arriving as early as 4:00 a.m. and sleeping in a spare bedroom because JB's father, DB, was a single father who had to leave home early to arrive in time for the beginning of his work shift. He trusted (and circumstances compelled him to trust) Ms. Belzan as someone who could protect his daughter.

[21] Unfortunately, JB's additional time at the Daycare also increased Mr. Shaw's familiarity and provided him the opportunity for sexual contact. There were two specific incidents of sexual interference:

1. In about November 2017, JB was in the kitchen area of the home's upper level and believed Mr. Shaw was opening candy. She walked towards him, as it was not uncommon for him to give candy to children. She hoped Mr. Shaw would give her candy. Instead, once she close enough, Mr. Shaw pinned JB in the corner of the kitchen facing away from him. She recalls seeing cupboards, walls and a counter. Mr. Shaw then wrapped an arm around her and started grinding his penis against her buttocks. They were both wearing clothing at the time. Mr. Shaw whispered in her ear, saying that he wanted to put his "dick" in her. Nobody had said anything like that to JB but she knew what it meant. JB eventually pushed off the counter and walked away. The entire episode lasted about 15 seconds; and
2. About a month later, in December 2017, JB states that she was lying on her stomach playing with one of the toddlers in the

> basement level of the Daycare. Mr. Shaw came from behind, grabbed JB's ankles and pulled her away from the baby. He then lifted her up by the waist and started grinding his penis against her buttocks. Again, they were both fully clothed at the time. Mr. Shaw again whispered that he wanted to put his "dick" in her. He said that about two or three times. JB managed to squirm away. A little while later, while JB was getting ready to go to school, Mr. Shaw gave her a chocolate in Santa Claus wrapping. She remembered the hypocrisy of the gift.

[22] Two further comments merit emphasis:

1. As indicated and as with RS, Mr. Shaw used candy as a form of reward or enticement. The practise of offering candy to children to encourage and/or soften the injury caused by sexual exploitation is troubling; and
2. JB was older than RS at the time of these assaults. In addition, Mr. Shaw's words and actions with JB were more openly hostile and vulgar than with RS. All of this clearly alerted JB to the fact that something was very wrong. She was not receptive or compliant as RS. I mention this because it did not lead Mr. Shaw to stop. Rather, he decided to physically and sexually impose himself on a young girl, twice. This is a relevant fact.

MA

[23] These charges revolve around a "spanking" or "tapping" game. As indicated, the "game" involved chasing (or sneaking up on) another person and then using your hand to "spank" or "tap" on the buttocks. MA testified that Mr. Shaw invented the game including a variation of it where the Accused sat on a chair while the children tried to pull him off. Once forced to stand, the children would then "tap" or "spank" Mr. Shaw and run away. MA was left feeling uneasy and she passed on this discomfort to her mother.

[24] It is undisputed that the Accused participated in this game and that he continued to participate even after being instructed to stop by Ms. Belzan who, in turn, was prompted by a complaint directly from MA's parents. Again, unfortunately, Mr. Shaw did not stop. MA's mother decided to speak with Mr. Shaw

about it, albeit in a somewhat muted manner because she did not want to expose her children not unnecessary conflict.

[25] I determined that Mr. Shaw's decision to continue playing the game despite the warnings constituted an assault on MA.

CIRCUMSTANCES OF THE OFFENDER

PRE-SENTENCE REPORT

[26] I read the presentence report authored by Carrie Beasley and dated November 30, 2023. The following information is extracted from that report:

1. Mr. Shaw was born on July 31, 1965. He is currently 58 years old. His parents are both deceased.
2. Mr. Shaw has no criminal record.
3. In this interview, Mr. Shaw revealed nothing that might foreshadow the actions that brought him before this Court. Mr. Shaw denies any history of substance abuse. He did not witness or experience any abuse at his home.
4. Mr. Shaw completed grade 9 at Bloomfield school in Halifax. He left school in grade 10 to begin work as a cleaner. There is no evidence that he experienced any trouble in school. Mr. Shaw indicated during his presentence report interview that he liked school and that he was grades were somewhat average. In the circumstances it was not entirely clear why he left.
5. Mr. Shaw voluntarily moved out of his family home when he was 19 to move in with an older woman. It is not clear how or why that relationship ended. It does not appear to have produced any children.
6. The evidence at trial indicated that Mr. Shaw met Lori Belzan who ran the Daycare. His statements to the probation officer regrading their relationship are consistent with the summary provided above. However, Mr. Shaw repeated that, in terms of his skill in operating the Daycare, he became "good at all of it".

7. Mr. Shaw is currently single and unemployed. He did meet a woman named Tiffany in 2021 but she passed away about a year later from a massive heart attack.

8. In terms of his physical health, Mr. Shaw was diagnosed with absolute epilepsy in December 2022. He smokes a pack of cigarettes daily. He has used cannabis but not on a daily basis. He admits using cocaine recently although it is not a habit.

9. He has ongoing mental health issues arising mainly out of these proceedings. He fears for his safety and has been abandoned by all of his family in any former friends. No third party filed any documentation or spoken as to the more positive aspects of Mr. Shaw's character. Mr. Shaw told the probation officer that he talked himself out of suicide.

10. Mr. Shaw maintains his innocence and is dumbfounded as to how he came to be convicted of crimes that he said he did not commit. He maintains that he never touched anybody other than tapping a child on the buttocks while playing a game. He said that he was told to stop and he did. The probation officer completing the presentence report concludes that Mr. Shaw does not accept responsibility or demonstrate any remorse for his actions.

COMPREHENSIVE FORENSIC SEXUAL BEHAVIOUR ASSESSMENT

[27] On October 17 and 18, 2023, Mr. Shaw voluntarily submitted to a Comprehensive Forensic Sexual Behaviour Presentence Assessment at the Nova Scotia Hospital in Dartmouth, Nova Scotia. Sonia Smith, M.Ed. completed the assessment and authored a report dated November 16, 2023.

[28] Mr. Shaw was fully cooperative throughout with one possible exception: Mr. Shaw did not consent to obtaining collateral information from other sources.

[29] This report is designed to address the risk Mr. Shaw poses to the public and to consider his rehabilitative potential. It was not intended to inform any other aspect of the sentencing process or objectives including, for example, denunciation.

[30] I have carefully considered this report and note the following:

1. Again, Mr. Shaw has no criminal record. There was no document or formal indication that Mr. Shaw is inclined towards sexual violence or any other type of criminal behaviours.

2. Unlike the information provided to the probation officer as part of the pre-sentence report process, discussed above, Mr. Shaw's description of his upbringing was somewhat less positive. He now described "tough times" throughout his formative years. He recalled his parents struggling financially to raise seven children. He also remembered alcohol abuse in the home and memories of violence in terms of smashing items. However, he denied any direct experiences of physical domestic abuse.

3. Mr. Shaw left school to work in Grade 9. Ms. Smith concluded that Mr. Shaw has average cognitive abilities and concluded that "educational upgrading is not an area of criminogenic need for him at this time".

4. Mr. Shaw repeated that he no longer has close friends or supportive family members given his conviction in this proceeding. In order to avoid confrontation in light of the publicity this matter received and to maintain contact with the outside world, he assumed the alias "John Shea".

5. Mr. Shaw has used alcohol and has tried cocaine, but there is nothing in his reporting that would suggest a substance abuse disorder.

6. Mr. Shaw demonstrates a capacity for grandiosity when describing how attracted women are to him. They pursue him. In addition, Mr. Shaw boasted of his own sexual prowess. Ms. Smith uses words such as "robust", "impulsivity", and "promiscuity" to encapsulate Mr. Shaw's view of his own sex drive and sexual encounters. She also noted the concerns that:

    a. "[C]oercion and outright violence did not appear to be entirely sexually deterring for him when adult females were involved."

    b. Mr. Shaw views women as always interested in sex - perhaps a byproduct of his inflated image of his sexual performance;

c. These narcissistic traits seem to allow Mr. Shaw to deliberately cross legal sexual boundaries to pursue his own pleasure while, in fact, disregarding those of others. It also allows Mr. Shaw to confuse, blur, and justify his actions and limits of acceptable sexual boundaries.

d. Mr. Shaw's use of candy as a way to placate his victims is a type of "approach-specific dynamic" in which strategies are created to achieve a desired sexual outcome. Inappropriate and questionable sexual contact is rationalized if Mr. Shaw builds in sufficient positive inducements as part of the relationship. Thus, the innocent and immature response of a young child is not overtly negative because she is receiving candy as a prelude to sexual abuse. As another example, Mr. Shaw recently had a sexual relationship with a 35-year-old woman named Tiffany who recently, tragically, passed away from an overdose. Mr. Shaw stated that he combined their personal relationship with his desire to help Tiffany beat her drug dependency. This sparked in Mr. Shaw a desire to work as an addictions support worker – apparently oblivious to the blurred lines which arose given his role as Tiffany's sexual partner and his perceived role as her addiction counsellor. To be clear, there was nothing inappropriate about Mr. Shaw's relationship with Tiffany. The point is that he ignores, or disguises problems associated with sexual contact beneath unrelated behaviours he considers to be "good".

7. Mr. Shaw seems inclined to ruminate, repress his feelings and blame others for his problems. As a result, Ms. Smith issued the caution that treatment may provide difficult as his engagement may not be genuine. On this issue, Ms. Smith observed that Mr. Shaw's denials of guilt in this proceeding means that he is unable to offer insight into the internal factors which may have contributed to acting on his pedophilic sexual interests. I pause here to emphasize that Mr. Shaw is entitled to maintain his innocence and deny my findings of guilt. I do not consider this an aggravating factor whatsoever. It simply means that there is not mitigating circumstances that can be taken into account

because the Court is unable to shed light on the underlying causes that gave rise to the criminal acts.

8. Mr. Shaw's sexual responses suggested sexual interests in underage females ranging from infant to early teenager. This is congruent with the age and genders of his victims. He also demonstrated sexual responses to underage males (infant to early teenager) but these were typically of a lower magnitude compared to females.

9. Overall, the testing indicated that Mr. Shaw is likely to reoffend, especially with young women - less so with young males. Moreover, Ms. Smith determines that his baseline risk for sexual recidivism is approximately twice that of the average person adjudicated for crossing legal sexual boundaries. If Mr. Shaw were to reoffend sexually, his history and current assessment results suggest that he would likely victimize an underage female over whom he has authority and access. Having said that, I also note that Ms. Smith considered Mr. Shaw's age (he is now 58 years old) to be a factor which significantly lowers his risk of re-offending.

[31] Before leaving this report, I also want to note that there are allegations referenced in this report regarding sexual abuse of his step-daughter or Ms. Balzan's biological daughter. I have no evidence regarding these allegations and, given their prejudicial content give them no weight in my decision.

VICTIM IMPACT STATEMENTS

[32] Three victim impact statements were filed:

1. The statement of TB dated November 27, 2023. TB is RS's aunt;
2. The statement of AB. AB is RS's mother;
3. The statement of LA. LA is MA's mother.

[33] All three individuals were present in Court and read their statements into the record.

[34] The statements of TB and AB naturally focussed on the ongoing effect of these proceedings on RS whose carefree childhood innocence was shattered and who

naturally continues to struggle with the contradiction of Mr. Shaw's ruse of affection as a means of abuse. I understand there was delay obtaining therapy for RS due to COVID but she was fortunately able to eventually find help.

[35] Understandably as RS's mother, AB feels the weight of enormous guilt because of what happened to RS at the Daycare. It needs to be said that there was nothing she or anybody else could have done given RS's own attempts to protect Mr. Shaw who she considered a friend. As well, although she and others spoke of the lack of a criminal record check at the Daycare, this would not have revealed anything as Mr. Shaw did not have a criminal record. I realize that this may do little to assuage their grief or guilt, but the fact is that there are misfortunes which simply cannot be predicted or prevented.

[36] LA similarly spoke of the guilt she feels as a parent, focussing the fact that she sent her child to this daycare 850 times, largely unaware as to the magnitude of what was happening to some of the children, including her daughter. LA's family has spent significant amounts of time and money obtaining the psychological therapy needed to process and move beyond these experiences.

[37] LA concluded with a message of hope as she expressed a renewed sense of strength and confidence in herself, her family, and her community.

ANALYSIS

OVERARCHING PRINCIPLES, RELEVANT CONSIDERATIONS AND THE ANALYTICAL FRAMEWORK

[38] The process of sentencing is understandably focussed on the offender who is now made subject to the full correctional weight of the state. As such, it a necessarily contextualized and individualized. Among other things, each offence involves a unique accused and unique surrounding circumstances.

[39] I do not discount or discredit the victim impact statements or the trauma suffered by the victims and their families. And nothing this Court says in words can miraculously wash away the stain of sexual trauma. However, I am compelled to confirm that the focus must remain on Mr. Shaw.

[40] The analysis is informed by section 718 of the *Criminal Code* which confirms that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing "just sanctions".

[41] Section 718 further confirms that this purpose is achieved by imposing a "just sanction" that has one or more of the following objectives:

1. Denunciation (section 718(a));
2. Deterrence (section 718(b));
3. Separating offenders from society (section 718(c));
4. Rehabilitation (section 718(d));
5. Reparations to the victim or community (section 718(e)); and
6. Promoting accountability and the need to accept responsibility for harms done to victims and society (section 718(f)).

[42] Section 718.1 and 781. 2 provides additional principles which the Court must apply to realize the fundamental purpose and related objectives of sentencing. The sequence in which these statutory provisions appear somewhat reflects the analytical path followed when determining a fit and proper sentence. However, for clarity and emphasis, sentencing is not affixed to some rigid formulaic approach. Again, it is ultimately contextual and highly individualistic:

1. Section 718.1 codifies the principle of proportionality or, more specifically, that: "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender";
2. Section 718.2(a) identifies the need to consider aggravating and mitigation circumstances that may increase or decrease the appropriate sentence. It also provides a non-exhaustive list of examples that constitute aggravating circumstances. For present purposes, the following specific subsections apply in this case:
    a. Section 718.2(a)(ii.1) confirms that abusing a person under the age of 18 years is an aggravating circumstance;
    b. Section 718.1(a)(iii) speaks confirms that abusing a position of trust in relation to the victim is an aggravating circumstance;

c. Section 718.1(a)(iii.1) confirms that criminal acts which have significant impact on the victim, considering their age and other personal circumstances is an aggravating circumstances.

3. Section 718.2(b) of the *Code* speaks to the notion of parity. The underlying premise is that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." The principle of parity differs from that of proportionality, codified in section 718.1 and discussed above. Proportionality demands that a just sentence reflect the unique, particular circumstances of the offender and the offence. By contrast, a sentencing regime that is just and fair strives for parity so that similar sentences are imposed in similar situations. To achieve parity, the Court looks beyond the single case before it and searches for appropriate comparisons in the jurisprudence. In doing so, the Court not only achieves parity but invokes the collective wisdom of other judges facing similar issues. These two principles (proportionality and parity) do not work at cross-purposes. On the contrary, they work in tandem towards a just and proportionate sentence. Thus, in *R* v *Friesen*, 2020 SCC 9, the Supreme Court of Canada wrote: "Parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality" (at paragraph 32).

4. Section 718.2(c) speaks to the notion of totality. This means that where consecutive sentences are imposed and a preliminary determination of sentence is made, the Court stands back and consider the total sentence in the aggregate. In doing so, the Court takes a sober second look to ensure that the sentence is not unduly long or harsh.

5. Section 718.2(d) and (e) engages the notion of restraint and the obligation to consider less restrictive sanctions if appropriate.

ADDITIONAL CONSIDERATIONS SPECIFIC TO SEXUAL VIOLENCE AGAINST CHILDREN

[43] As indicated above, section 718.2(a) already establishes a statutory requirement to consider, as an aggravating factor on sentencing, sexual violence against children. Section 718.2(a) also identifies abuse of trust as an aggravating factor. Tragically, the bulk of cases involve adults who exploit the trust vested with them and capitalize on that trust to generate opportunities for sexual crime. This is what occurred here, recalling that Mr. Shaw was operating a day care and entrusted with the care and safety of young children.

[44] However, as mentioned above, in *Friesen*, the Supreme Court of Canada closely examined in the unique and often poignant problems that arise in circumstances of sexual violence against children and became engaged in certain principles which apply specifically to these types of cases.

[45] In *Friesen*, the Supreme Court of Canada:

1. Confirmed that the sentence must recognize the inherent wrongfulness of these shocking crimes; the potential, reasonably foreseeable harms which the victim and society will be compelled to address when these types of crimes of committed; and, of course, the actual harm suffered (at paras 76-82).
2. Recognized Parliament's decision to increase the maximum sentence available for crimes against children and the corresponding signal that sexual violence against children must attract more severe sentence which prioritize denunciation and deterrence. (at paragraphs 95 – 105).
3. Responded with the strongly worded declaration that the Court is 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." (at paragraph 106).

[46] To ensure the Court moves forward in the right direction, the Supreme Court urged sentencing judges to 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." (at paragraph 110) As well, sentencing judges may be "justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences" (at paragraph 110)

[47] The overall message that the Court in *Friesen* described as "clear" was 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." (at paragraph 114)

[48] Helpfully, the Court also provided the following instructions to be applied when imposing sentences for adults convicted of sexual crimes against children:

> "(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."
>
> (*Friesen*, at paragraph 107)

[49] Finally, the Court offered additional practical guidance by listing a number of specific factors that bear upon the process of fashioning a fit and proper sentence in these types of cases:

1. **Likelihood to Reoffend**: This factor reinforces the broad societal imperative to protect children by separating those who demonstrate a risk to their sexual and physical integrity (at paragraph 122 – 24).
2. **Abuse of a Position of Trust or Authority**: This factor recognizes both the insidious nature of the crime where a trusting relationship is debased into one of sexual exploitation and the corresponding trauma caused when a victim is abused by a person entrusted with their protection and well-being. (at paragraph 125 – 129). Thus, the Court emphasized that: "all other things being equal, an offender who abuses a position of trust to commit a sexual offence against a child should receive a lengthier sentence than an offender who is a stranger to the child." (at paragraph 130).
3. D**uration and Frequency** (at paragraphs 131 – 133).
4. **Age of the Victim**: The Court descried this as a "significant aggravating factor" due not only to the relative vulnerability of a young person but also the moral blameworthiness of a person

who exploits their age as a method of sexual control (paragraphs 134 – 136).

5. **Degree of Physical Interference** (paragraphs 137 – 147). The Court confirmed that "the degree of physical interference is a recognized aggravating factor. This factor reflects the degree of violation of the victim's bodily integrity. It also reflects the sexual nature of the touching and its violation of the victim's sexual integrity." (at paragraph 138). That said, this issue should be carefully considered based on the factual context of each case because, the Court warned, the harmful affects of sexual violence cannot necessarily be diminished in one case simply because it did not involve pronounced or violent interference in the form of, for example, penetration, fellatio, or cunnilingus, but instead touching or masturbation (paragraphs 144 – 145). The Court emphasized that it would be "an error to understand the degree of physical interference factor in terms of a type of hierarchy of physical acts. The type of physical act can be a relevant factor to determine the degree of physical interference." (at paragraph 146).

6. **Victim participation**: This factor is not particularly relevant in this case, given that the victims were all children. This is because children cannot be seen as consenting to (or voluntarily "participating") sexual acts. That said, this factor is somewhat relevant here given that Mr. Shaw engaged with his victims by using candy in an effort to gain their trust, moderate their injury, and groom them for his nefarious, sexual purposes. I return to that issue below (at paragraphs 148 – 154).

CONCLUSION

[50] I begin by noting the *Kineapple* principle which applies where convictions may be stayed where they arise from the same facts and legal nexus. In this case, all parties submit that Mr. Shaw's conviction under section 271 of the *Criminal Code* (sexual assault) as against both RS and JB be stayed such that the sentence will be imposed based on the conviction for sexual interference under section 151 of the *Criminal Code*. I agree.

[51] The Crown seeks the following sentences:

1. With respect to the crime of sexual interference against RS – a period of incarceration of five (5) years.
2. With respect to the crime of sexual interference against JB - a period of incarceration of three and a half (3 ½) years consecutive;
3. With respect to assault against MA - a period of incarceration of four to six (4 – 6) months consecutive.

Representing a total sentence of approximately 9 years.

[52] The Defence proposes:

1. With respect to the crime of sexual interference against RS – a period of incarceration of three and a half (3 ½) years.
2. With respect to the crime of sexual interference against JB - a period of incarceration of two and a half (2 ½) years consecutive.
3. With respect to assault against MA - a period of incarceration of two (2) months consecutive.

Representing a total period of incarceration of 6 years and 2 months.

[53] Applying the principles and factors discussed above, I begin by noting that there are very limited mitigating circumstances in this case. Mr. Shaw has identified no support and offered no remorse. His refusal to accept the conviction is not an aggravating factor but, again, it leaves the Court with no insight into the underlying issues or causes.

[54] I agree with defence counsel that the lack of a criminal record is a mitigating factor in the sense that he is not a pedophile with repeat convictions. That said, I also agree with counsel that, given the nature of these crimes and, in particular, the serious breach of trust for sexual gratification, this mitigating factor is of limited value.

[55] There are a number of aggravating factors that are common to the victims in this case. First and foremost, they were very young children, and they were all entrusted to Mr. Shaw's care. It was a trust that was violated in a way that triggers

incredulous condemnation and denunciation. I make the following more specific findings:

1. As to Rs, the degree of physical interference on such a young child was highly aggravating. The degree to which Mr. Shaw exploited her innocence can only be described as shocking.
2. As to JB the actual physical interference was less serious, but it was also involved a more physical and vulgar imposition of Mr. Shaw's physical and sexual presence upon her young body.
3. The assault on MA by spanking her buttocks despite being told this was to stop exposes a distinct inability to set and respect established boundaries. Nevertheless, it is also the least serious of the offences before me.

[56] Schools and daycares are meant to be sanctuaries where a child's safety and sexual integrity is guaranteed above all else. Mr. Shaw turned the basement of this sanctuary into a lair where he could identify victims quietly, befriend them deceptively, and violate them privately. He intentionally debased a fundamental societal expectation in a way which was very personal, painful, and resulted in prolonged repercussions for the victims, their families, and the community.

[57] As to the likelihood of re-offending and unlike any of the cases presented by counsel, I have the benefit of the Forensic Sexual Behaviour Assessment written by Ms. Smith of the Nova Scotia Hospital. This report indicates an alarming high likelihood of re-offending absent intensive treatment. As problematic, there are indications that Mr. Shaw's response to treatment may not be genuine thereby minimizing any potential therapeutic value.

[58] As to the duration and frequency of the offence, the crimes against RS were multiple and ongoing. The crimes against JB were fortunately (if that could be viewed as the right word in these difficult circumstances) limited to 2 occasions.

[59] The crimes against MA were somewhat more continuous because the spanking that constituted assault had characterized by Mr. Shaw as a "game". At the same time, the explicit degree of sexual overtones were clearly diminished and, indeed, did not rise to the level of sexual assault. Finally, as defence counsel notes, the duration of these offences was over a shorter period of time than what can be seen in the jurisprudence provided by counsel.

[60] I pause here to emphasize a fact that constitutes another important distinguishing feature that separates this case from those presented in counsel's written submissions. This case involved multiple young victims all of whom were enrolled in a Daycare. Almost all of the cases put before me involve a single victim and none involved a Daycare. In other words, Mr. Shaw targeted a larger number of victims while in a position of trust at a Daycare where parents were paying primarily for safety and security – not abuse. This aggravating factor is more specific to this case.

[61] As to the degree of interference, I have not lost sight of the fact that, unlike almost all of the jurisprudence placed before me by counsel, Mr. Shaw's actions did not reach the depths of depravity demonstrated by the offender in *Friesen*, for example, or by other offenders who, as defence counsel properly emphasizes, exploited their roles as parents, step-parents and grandparents to engage in what might be described as even more horrific breaches of trust which took place over a much longer period of time and escalated to unimaginable sexual trauma. Obviously, this is not a mitigating fact and it does not excuse or even explain Mr. Shaw's action. It only means that his breaches cannot be characterized as the worst this Court or others have seen and, from that perspective, this particular aggravating factor may not be view as being as grave.

[62] Beyond these common aggravating features, it is necessary to make certain more specific comments. I have summarized the various offences above and do not need to repeat the facts beyond making the following conclusory observations:

[63] I have very carefully read and considered the cases presented by counsel. I have attached as Schedule "A" a list of those cases, all of which I read and considered.

[64] Having weighed all of these issues, I order that:

1. Mr. Shaw be incarcerated for a period of 4.5 years for the crime of sexual interference against RS
2. I agree that the period of incarceration for the crime of sexual interference against JB should be lesser and, in my view, an appropriate and fit sentence in the circumstances is 2.5 years, consecutive;
3. Mr. Shaw shall also be incarcerated for a period of 3 months for the assault on MA.

[65] This represents a total period of incarceration of 7 years 3 months which is a significant period of time. Mr. Shaw may be almost 65 years old by the time he is released.

[66] As required under section 718.2 of the Criminal Code, I have stepped back and considered this sentence on the basis of totality. I am satisfied it is fit, proper and just in the circumstances.

[67] I note that the cases presented by the parties speak of sentences in the range of 6-7 years range for matters that could be described as escalating and unfolding over a longer period of time. That said, I cannot diminish in this case the breach of trust, the deceptive manner in which children were robbed of their innocence. Moreover, these crimes were committed in a Daycare where the victims (given their young ages) were necessarily confined to the Daycare as a safety precaution. In a grim reversal, a requirement designed to ensure their safety was perverted into an opportunity for abuse. This fact results in a cumulative or aggregate sentence that reflects the harm that crimes against a single individual do not capture. I emphasize that I have carefully considered the cumulative effect to ensure that it is not unduly and unnecessary harsh. In the circumstances, I am satisfied that the consecutive sentence are not unduly or unnecessarily harsh.

ANCILLIARY ORDERS

[68] The form and content of the ancillary orders will proceed with the consent of all parties. In particular, the following ancillary orders shall issue:

1. Registration under the *Sexual Offender Information and Registration Act* or "SOIRA", SC 2004, c.10 for Mr. Shaw's lifetime;
2. An order requiring Mr. Shaw to provide a DNA sample for analysis and storage in a databank, under section 487.05 of the *Criminal Code*;
3. An Order prohibiting communications with certain identified individuals under section 743.21(1) of the *Criminal Code*;
4. A Prohibition Order under section 161(1) of the *Criminal Code* imposing restrictions on Mr. Shaw's ability to be in contact with, or communicate with, persons under the age of 16; and

5. A weapons prohibition order under section 109 of the *Criminal Code*.

[69] Finally, on consent the victim fine surcharge is waived.

Keith, J.

Schedule A

R v *Friesen*, 2020 SCC 9
R v *Hughes*, 2020 NSSC 376
R v *A.L.P.*, 2021 NSSC 238
R v *S.F.W.*, 2021 NSSC 312
R v *A.M.B.*, 2022 NSSC 262
R v *C.J.D.*, 2023 NSSC 334
R v *D.C.*, 2020 NLSC 78
R v *Roper*, 2020 ONSC 7411
R v *D.J.H.*, 2022 BCSC 1743
R v *Williams*, 2020 BCCA 286
R v *J.M.*, 1998 CanLII 18034 (NLCA)
R v *Arcand*, 2010 ABCA 363
R v *Wood*, 2021 NSSC 253
R v *McNutt*, 2021 238
R v *K.D.D.W.*, 2020 MBCA 52
R v *S.J.M.*, 2021 NSSC 235
R v *B.J.R.*, 2021 NSSC 26
R v *N.M.*, 2020 NSPC Unreported
R v *Lemay*, 2020 ABCA 365
R v *S. (D.)*, 2022 MBCA 94
R v *Woodward*, 2011 ONCA 610
R v *J.S.*, 2018 ONCA 675