SUPREME COURT OF NOVA SCOTIA
Citation: *R v. B.J.L.*, 2024 NSSC 33

Date: 20240123
Docket: 505907
Registry: Halifax

Between:

His Majesty the King

Applicant

v.

B.J.L.

Respondent

Restriction on Publication of any information that could identify the victim or witnesses: s. 486.4 Criminal Code

Judge:	The Honourable Justice Darlene A. Jamieson
Heard:	January 23, 2024, in Halifax, Nova Scotia
Oral Decision:	January 23, 2024
Written Decision:	January 25, 2024
Counsel:	Mr. Peter Dostal, for the Provincial Crown Mr. Eugene Tan, for B.J.L.

Order restricting publication — sexual offences

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

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

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

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

Mandatory order on application

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

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

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

Victim under 18 — other offences

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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

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

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

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

Child pornography

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

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

By the Court:

Overview

[1] On April 6, 2023, B.J.L. was convicted of three counts of sexual assault contrary to Section 271 and three counts of sexual interference contrary to Section 151 of the *Criminal Code.*

[2] The trial decision is reported at 2023 NSSC 123.

[3] The s. 271 convictions were conditionally stayed pursuant to the *Kienapple* principle (*R. v. Kienapple*, [1975] 1 S.C.R. 729; *R. v. Prince* [1986] 2 S.C.R. 480). B.J.L. is, therefore, being sentenced in relation to the s.151convictions. I note that both Crown and Defence agreed the s. 271 convictions should be conditionally stayed.

[4] Section 151 states:

> **Sexual interference**
>
> 151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years
>
> (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; …

[5] The following is my decision concerning a fit and proper sentence for B.J.L.

1. The Facts

(a) Circumstances of the Offences

[6] In 2019, at age 7, A.N. lived with her mother and two siblings in a three bedroom home. At the time of trial A.N. was 11 years old.

[7] B.J.L. had known A.N. her entire life. The two families were like family, although not related. A.N.'s mother, M.N., and B.J.L.'s partner, T.D., were best friends and had known each other for many years. Their children were like brothers and sisters. They regularly spent time at each other's homes. When one of the sexual assaults occurred T.D., B.J.L. and their children were living with A.N.'s family.

[8] The sexual assaults against A.N. involved 3 separate incidents of vaginal touching/digital penetration over a period of approximately one year. A.N. said that it hurt very bad and that it hurt each time. She said she was scared each time and was shivering. One assault occurred in her Aunt TD's home (also B.J.L.'s home) during a sleepover. A.N. was on a mattress and her three godbrothers were in the same room sleeping. B.J.L. entered the room and laid beside her. A.N. was watching a dog movie or cartoon. During the assault she was facing the iPad and he was facing her hair. B.J.L. touched her vagina and digitally penetrated her vagina. During the assault she described herself watching the iPad and shivering.

[9] After the assault they went downstairs and watched a movie. B.J.L. was standing by the TV and said he was going to show her a trick but not to tell anyone. Her Aunt TD came into the room before he could show her the trick and told her to go to bed.

[10] Two assaults occurred in her own home, one when she was sleeping in her mother's bed and one in her brother's bedroom. Each involved vaginal touching and digital penetration. In relation to the sexual assault in her mom's bed, A.N. described B.J.L. squeezing his finger "up there." She explained that "up there" was the hole in her vagina not in her bum, and that she tried to leave, but she never wanted to make him mad.

[11] The assault that took place in her brother's bedroom was during the day. B.J.L. was in the bedroom, in her brother's car bed, on the second floor and motioned to her with his finger to go into the room. She said her friend NK was also in the room when this assault occurred.

(b) Circumstances of the Offender

[12] In advance of the sentencing hearing, I received a Pre Sentence Report ("PSR"), prepared by probation officer Ms. Denise M. Snyder dated March 15, 2023 and an Impact of Race and Cultural Assessment ("IRCA") prepared by Dr. Barb Hamilton-Hinch, and dated November 27, 2023.

Pre Sentence Report (PSR)

[13] B.J.L. is 31 years of age. The PSR indicates he was born in Halifax, N.S. and was raised primarily by his mother. His father lived close by and was present in his life. His father was incarcerated for several years when B.J.L. was a young child.

His father moved several hours away from Halifax when B.J.L. was 12 and his contact thereafter was limited to every couple of months. The PSR indicates B.J.L.'s involvement in the Criminal Justice System began at 13 years of age. He indicated to Ms. Snyder that he had to leave the Halifax Regional Municipality when he was 15 years of age, at which time he temporarily relocated to Canso, N.S. where he resided with his paternal grandfather, and his "Nan."

[14] B.J.L. reported to Ms. Snyder that he was incarcerated at Waterville Youth Facility during his teenage years. He disclosed being a victim of various forms of abuse during his periods of incarceration. There are mental health illnesses in his family of origin. Members of both his maternal and paternal family have been diagnosed with mental health illnesses. B.J.L. has a loving and supportive relationship with his mother.

[15] B.J.L. has had a number of relationships both short and long term resulting in his being a father to nine children. He no longer has contact with his children nor their mothers. This is largely due to his current legal issues.

[16] B.J.L.'s highest level of education is grade 9. He has undertaken some programming while incarcerated. B.J.L. has not been diagnosed with any learning disabilities but believes he is dyslexic.

[17] B.J.L. has not had any regular employment during his life. His last employment was cutting trees with his father in 2021. At the time of the PSR, B.J.L. did not have any source of income and was not financially stable. The PSR reports he has close to $5,000 in outstanding fines.

[18] B.J.L. has used alcohol and drugs since he was a pre teen. His drug use includes cocaine, pills, valium, and ecstasy. He started smoking crack cocaine in 2019 which escalated to intravenously injecting cocaine and Dilaudid.

[19] B.J.L. comes before this court with an extensive criminal record that is attached to the PSR.

Impact of Race and Cultural Assessment (IRCA)

[20] In preparing the IRCA, Dr Hamilton-Hinch interviewed B.J.L., his mother and paternal grandmother. As Dr Hamilton-Hinch points out, in examining B.J.L.'s background, it is important to look at his lived experience as an African Nova Scotian male, and the challenges he experienced in his family household.

[21] The IRCA provides an overview of the experience of African Nova Scotians and states:

> The historical reality of the impact of racism continues and is evident in the ongoing negative experiences of African Canadians in the justice, health, education, employment, and social systems. Black people in Canada are subjected to higher rates of incarceration, unemployment, difficulty in accessing advanced education, and equitable health care (Codjoe, 2001; James, 2012; Wortley & Owusu-Bempah, 2011).
>
> Black communities are disproportionately impoverished, and economic strain has impacted the manifestation of crime in racialized neighbourhoods. Crime in ANS communities can also be attributed to the established cultural norms that exist within lower socioeconomic geographic locations.
>
> …
>
> Examining the history of Black people in Canada, with particular focus on Nova Scotia, their involvement with the criminal justice system, and anti-Black racism that plague their everyday circumstances, provides a foundation to contextualize (B.J.L.'s) socio-cultural lived experiences. (pages 7 and 8)

[22] With respect to B.J.L.'s personal experience, Dr. Hamilton-Hinch states:

> (B.J.L.) can be considered a product of his environment. He was exposed early to challenges in the public school system, alcohol and drug use in the home, incarceration of a parent, sexual abuse while incarcerated, and mental illness in some family members. The complexity of these challenges could have contributed to his involvement in the criminal justice system. His JEIN report illuminates his entanglement with the criminal justice system and identifies the necessity that interventions should have been adopted earlier in his life trajectory. (page 9)

[23] The IRCA provides a family history for B.J.L. It states in part:

> (B.J.L.) says he identifies as being Black and he didn't reference his Indigenous roots. The Indigenous roots of the family were mainly discussed by his mother and maternal grandmother in the collateral interviews, although (B.J.L.) does know that his maternal grandfather was part Indigenous.
>
> ..his family lived in public housing most of his child/adolescent life until about the age of 16. He stated the main source of income for the family was that his mother worked at Sobey's and received a disability pension.
>
> …

> Due to financial challenges, the criminal activity and/or delinquency of some family members, (B.J.L.) recalls having to move abruptly a couple of times. He shared that he recognized as a family they lacked finances, and he often did his best to fend for himself. He stated that he sold drugs around the age of 13, so that he could support himself. His mother reported they were eventually evicted from _____ as they were seen as a threat to the community's safety. (B.J.L.) then moved to _____ (at 16 years old with his girlfriend and the mother of his first child), his mother moved to Sackville with her boyfriend, his sister moved with their maternal grandmother, and his brother was in jail.
>
> (B.J.L.) indicated that he lived between two of his girlfriend's homes for about ten years and was in and out of jail from the age of 13… (B.J.L.) has nine children… He stated:
>
> > I have not yet met the youngest child and the one that is four years old was only one and a half years old when I met him. But my other children know me. I had a good relationship with my children. I would discipline them, play with them, take them to the playground and played video games. I would get my pants dirty in the grass and dressed up with them for Halloween. They met their grandfather and grandmother on my mother's side when I was on house arrest. They met the grandfather on my father's side, and they have been down to Guysborough. I had the children overnight and would have them by myself when some of the mothers worked.
>
> …Currently, he does not talk to any of the mothers of his children because of the sexual assault/sexual interference charges. He indicated that before the offences he had a positive relationship with most of them.
>
> (B.J.L.) shared that he has limited contact with other family members, and that "since 2019 I have no friends because I was charged with sexual assault to a minor." He identified that his only support is his mother. (pages 10-11)

[24] The IRCA provides a residential history noting that B.J.L. lived mostly in low-income neighbourhoods growing up, often supported by public housing. He experienced poverty and racism. His family were evicted leading to his living in various locations. At age 16 he moved in with his girlfriend and their first child. Throughout his adolescence and young life, B.J.L. lived in various places including on house arrests with his mother, his maternal grandmother, and his maternal grandfather and step grandmother. B.J.L., on numerous occasions, found himself with no place to go. His living conditions remained very unstable, and he lived in various situations including with partners and mothers of his children, friends, his mother and sister, and a rooming house. The IRCA provides a chart setting out the numerous places and situations where B.J.L. lived from childhood to date, including the NS Youth Centre and Correctional Facilities (CNSCF and NENSCF). The IRCA points out the difficulty in not having a permanent address which is necessary when

trying to secure regular employment, social assistance, health services and basic stability.

[25] With reference to education, the IRCA notes significant problems beginning in grade 6 when he was expelled. He returned the next school year and was placed in grade 7. Issues continued and he later attended a program to assist students to stay in school. He was working on his grade 8 but left after six or seven months. He started grade 9 while living with his maternal grandfather away from Halifax but due to further issues left school. He has not been back to school since grade 9 but has started his General Educational Development (GED) certificate while incarcerated.

[26] B.J.L. has not been gainfully employed at any given time for more than a one year period. As a teenager B.J.L. sold drugs. He now has aspirations to open his own business.

[27] B.J.L. has substance abuse issues that date back to age 12. This includes alcohol and drugs such as crack cocaine. B.J.L. indicated that he does not have any health conditions that are impacting his overall health. The IRCA reports he is, however, taking prescribed medication (Olanzapine) and reported being prescribed an anti-psychotic drug (Vyvanse) to use as a mood stabilizer. As noted in the PSR, individuals in his family have been diagnosed with mental health illness on both the maternal and paternal side.

[28] B.J.L. described having no friends since these charges. He is in a relationship with a woman who is also incarcerated. His mother said that B.J.L. is a good father. B.J.L. said he tried to be an active father in some of his childrens' lives.

[29] B.J.L. has experienced trauma and loss in his life. For example, as a teenager one of his close friends was shot and killed. This has greatly impacted him. B.J.L. also reported being the victim of abuse as a youth.

[30] The IRCA explains the impact of Adverse Childhood Experiences or ACE's and says:

> Adverse Childhood Experiences (ACEs) are traumatic events that occur in a child's life before the age of 18. As an adult, ACEs can impact health, well-being and have a long-term effect. Exposure to abuse, neglect, and household dysfunction are the main categories of traumatic events. From these categories, they are divided into a total of 10 subcategories. Black children are disproportionately exposed to ACEs, which is a further compounding factor regarding childhood trauma (Hicks et al., 2021). It is evident from (B.J.L.'s) childhood that he experienced several ACEs. (page 19)

> A person that scores four or higher is considered to be at a higher risk of serious health complications later in life, this is according to the ACEs and Toxic Stress Risk Assessment Algorithm (Trauma-Informed Care Implementation Resource Center, 2020)…(page 19)

[31] Dr. Hamilton-Hinch notes that throughout B.J.L.'s childhood he had multiple experiences of trauma (abuse, alcohol and substance abuse, domestic violence, family member in jail, mental illness in the household, parental divorce/separation) and his risk for severe poor health outcomes is significantly elevated as he indicated experiencing various ACEs. The IRCA concludes:

> It is important to point out the number of ACEs that (B.J.L.) identified; six of ten that impacted his life. It is evident from the various lived experiences shared by (B.J.L.) that his mental health is fractured, and he has endured multiple traumas. Research indicates that when an individual experiences three or more ACEs they are at a high risk for having challenges as an adult. Adverse Childhood Experiences likely have contributed to (B.J.L.'s) mental, social and psychological development. (page 21)

[32] As noted above, B.J.L. became involved with the criminal justice system at an early age. He described to Dr Hamilton-Hinch negative experiences with the police, saying he was always being watched and felt he was being targeted.

[33] The IRCA provides details of Dr. Hamilton-Hinch's interview with B.J.L.'s mother and grandmother. His mother relayed having a difficult life herself providing details of trauma and issues she has faced. She also detailed the trauma B.J.L. experienced during his life. At the time of the interview she was homeless and living in a shelter. She also told Dr. Hamilton-Hinch that she has two children, in addition to B.J.L., one is incarcerated and the other is homeless, living with friends.

[34] B.J.L.'s maternal grandmother has not seen him in approximately six years. She had a long career as a nurse but is now retired. She described the way B.J.L. grew up as a very sad situation and that he grew up in a drug environment. She shared knowledge of the trauma B.J.L. experienced and said he was a sweet guy but the drugs killed him.

[35] Dr. Hamilton-Hinch concludes her report by making the following recommendations:

> All the support and resources offered to (B.J.L.) should be informed by his cultural position. He would be best served by accessing services and resources that are culturally responsive. It is suggested that accessing regular mental health services should be key

priorities for (B.J.L.), as well as helping him to secure accommodation and employment when he is released.

I offer the following specific observations and recommendations:

- Although (B.J.L.) maintains his innocence for the sexual assault of a minor charge, it is important to note that he has been found guilty of this offence. When released from custody, it is strongly encouraged that he engages with the Forensic Sexual Behaviour Program to support successful rehabilitation. This program:
- "The Forensic Sexual Behaviour Program provides assessment and treatment to individuals living in the community who have been convicted of a sex offence and are on parole or probation. The goal of the program is to increase client life satisfaction and to make communities safer by minimizing the likelihood of repeat offences." Forensic Sexual Behaviour Program | Nova Scotia Mental Health and Addictions (nshealth.ca)
- It would be beneficial if (B.J.L.) was connected to a mental health clinician (preferably one that understands (B.J.L.)'s cultural position) while he is incarcerated. This service could focus on his historical and generational trauma as well as the abuse he experienced. This support should be prioritized as a continued service when he is reintegrated into the community.
- Although (B.J.L.) does not identify substance use as a problem, he did share that he has been a daily user. (B.J.L.) would benefit from revisiting and accessing information and support around substance use, particularly as some of his charges took place while under the influence of a substance.
- It is evident that (B.J.L.) would benefit from having a Black male role model to assist him on his journey and provide positive reinforcement. This "support person" would be one who practices from a cultural trauma informed lens. They can help (B.J.L.) access available resources and services while he is incarcerated and support his reintegration back into the community. This person could be a social worker, health navigator, community navigator, and so forth.
- (B.J.L.) indicated he is working on his GED and currently does not have any immediate plans but would like to open his own business. He is uncertain how long his sentence will be but is interested in learning about business. Where possible it would be helpful if (B.J.L.) continued his education and was provided with developing educational goals.
- While incarcerated, (B.J.L.) could take advantage of any of the programs that support anger management. Although he reported that he has already participated in this service, it would be encouraged for him to refresh his skills as one of his offences is aggravated assault.
- In addition, *902 Man* Up is a program that supports individuals who have been incarcerated and reintegrating back into the community. (B.J.L.) would benefit from the intensive peer support that 902 Man Up would provide for him to live a prosocial

> life. They also offer transitional housing for individuals or experience housing instability. https://902manup.ca/
>
> - (B.J.L.) will require wrap-around support and services upon completion of his sentence. He has indicated that he is homeless and has no place to live.
> - He has not been gainfully employed in the past and will require support to develop basic skills to maintain employment. (Pages 25 to 27)

[36] Finally, B.J.L.'s criminal record is relevant. It is significant. The Record placed before me and contained in the PSR includes approximately 79 convictions (45 adult and 34 youth). Approximately 39 charges relate to breach of release orders or undertakings. Approximately 18 charges are for offences of violence, including uttering threats, assault, assault causing bodily harm, and weapons/firearms. The most recent assault is from July 2020. The more recent offences (2021 and 2022) were uttering threats charges.

(c) Impact on the Victim

[37] I have no difficulty concluding beyond a reasonable doubt that A.N. has suffered and continues to suffer psychological and emotional trauma and symptoms as a result of the sexual assaults, which have negatively impacted her life. A.N. provided a Victim Impact Statement. She is still very young but was able to describe being sad, crying, being afraid of men, not wanting to wear shorts for fear of being touched. She also described being impacted at school by having flashbacks when trying to do her school work. She said she is "in therapy."

2. Legal Parameters

[38] At the time of the offence, s. 151 carried with it a 14-year maximum sentence and a minimum sentence of one year. The one-year mandatory-minimum penalty was found unconstitutional in *R v Hood*, 2018 NSCA 18, aff'd 2016 NSPC 78. Various other Courts of Appeal have held that the mandatory minimum sentence of one year is contrary to s.12 of the Charter (see *R. v. JED* (2018), 368 C.C.C (3d) 212 (Man. C.A.); *R. v. Ford* (2019), 371 C.C.C. (3d) 250 (Alta. C.A.); *R. v. B.J.T.* (2019), 378 C.C.C. (3d) 238 (Ont.C.A.).

3. Positions of the Crown and Defence

Crown Position

[39] The Crown is seeking a sentence of 5 to 6 years incarceration plus ancillary orders. The Crown submits the aggravating factors are significant and the mitigating

circumstances are limited. The Crown referenced the following cases to support its position of a sentence in the range of 5 to 6 years:

- *R v Hughes, 2020 NSSC 376*
- *R v R., 2020 ONSC 7411*
- *R v GJK, 2020 MBQB 130*
- *R v WGL, 2020 NSSC 323*
- *R v BJR, 2021 NSSC 26*
- *R v CAL, 2021 NSSC 365*
- *R v CDC, 2021 NSSC 287*
- *R v CMS, 2022 NSSC 166*

[40] The Crown submits that this matter is most similar to *R v R, supra*, *R v GJK, supra*, and *R v CAL, supra.* The Crown says *GJK, supra*, and *R, supra*, are both somewhat more serious insofar as the sexual acts were more varied and explicit but were not penetrative in nature. The Crown says the case of *CAL, supra,* is less serious than this case, as it involved less intrusive touching and upon a significantly older victim. The Crown referred to the IRCA and B.J.L.'s difficult background, ethnic identity and life experience and submits that even after factoring in his personal circumstances, a sentence in the range of 5 to 6 years is suitable.

[41] The Crown seeks the following ancillary orders: a primary DNA order for designated offence; a 20 year SOIRA order; a 10 year weapon prohibition order; and a discretionary s. 161 prohibition (conditions in s. 161(1)(a) to (b)).

Defence Position

[42] The Defence submits the appropriate sentence should be 2.5 to 3 years. The Defence differs on the caselaw provided by the Crown but only in relation to which cases are applicable. The Defence says that while B.J.L. does have an extensive existing criminal record, the current offences are the first of their nature, and submits his prior record bears little relevance to the current circumstances. The Defence says the acts appear to be more consistent with deep-rooted mental health issues, as suggested in the IRCA, as opposed to a penchant for criminality. As such, the Defence submits that *BJR, supra, CDC, supra,* and *CMS, supra,* are more informative. The Defence says B.J.L.'s institutional behavior has changed positively and he is progressing in his educational studies and programming.

[43] The Defence said in written submission that the aggravating factors in this case include the position of trust and age of the victim. The Defence said in oral submissions that B.J.L. was in a position of trust in name only. The Defence said unlike some of the cases involving breach of trust, B.J.L. did not groom A.N. and this should be considered. The Defence further says that the IRCA must also bear consideration in the ultimate sentence. The Defence says the traumas that B.J.L. sustained as an African Nova Scotian male cannot be discounted, particularly with respect to the abuse he suffered.

[44] The Defence is in agreement with the ancillary orders proposed by the Crown. The Defence seeks a waiver of the victim fine surcharge.

4. Principles of Sentencing

[45] In imposing a fit and proper sentence, the court is guided by the purposes and principles of sentencing set out in the *Criminal Code*. Each sentencing hearing involves a unique accused and unique surrounding circumstances. Therefore, a fit and proper sentence is by necessity contextualized and individualized.

[46] The general purpose and principles of sentencing are found in s. 718 of the *Criminal Code.* The purpose of sentencing is to protect society and to contribute to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the objectives outlined in s. 718.

[47] The factors for consideration on sentencing include: denunciation; specific and general deterrence; separating offenders from society, where necessary; rehabilitation; reparations; and the need to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community (s. 718).

[48] In enacting section 718.01, Parliament created a special rule for those who abuse children under the age of 18, recognizing the importance of the safety of young persons during their vulnerable and developmental years. In these cases denunciation and deterrence are to be the primary objectives. This does not mean other sentencing objectives are to be disregarded, it means denunciation and deterrence are given the highest ranking among all of the principles of sentencing (*R. v. Oliver*, 2007 NSCA 15).

[49] The Supreme Court of Canada in *R v. Friesen*, 2020 SCC 9**,** said while s. 718.01 requires that deterrence and denunciation have priority, sentencing judges retain discretion to accord significant weight to other factors (including

rehabilitation and *Gladue* factors) in arriving at a fit sentence, in accordance with the overall principle of proportionality:

> [102] The text of s. 718.01 indicates that Parliament intended to focus the attention of sentencing judges on the relative importance of sentencing objectives for cases involving the abuse of children. The words "primary consideration" in s. 718.01 prescribe a relative ordering of sentencing objectives that is absent from the general list of six objectives in s. 718(a) through (f) of the *Criminal Code* (Renaud, at § 8.8-8.9). As Kasirer J.A. reasoned in *Rayo*, the word "primary" in the English text of s. 718.01 [TRANSLATION] "evokes an ordering of the objectives . . . that is . . . relevant in the [judge's exercise of discretion]" (para. 103). This ordering of the sentencing objectives reflects Parliament's intention for sentences to "better reflect the seriousness of the offence" (*House of Commons Debates*, vol. 140, No. 7, 1st Sess., 38th Parl., October 13, 2004, at p. 322 (Hon. Paul Harold Macklin)). As Saunders J.A. recognized in *D.R.W.*, Parliament thus attempted to "re-set the approach of the criminal justice system to offences against children" by enacting s. 718.01 (para. 32).
>
> [103] Section 718.01 should not be interpreted as limiting sentencing objectives, notably separation from society, which reinforce deterrence or denunciation. The objective of separation from society is closely related to deterrence and denunciation for sexual offences against children (*Woodward*, at para. 76). When appropriate, as discussed below, separation from society can be the means to reinforce and give practical effect to deterrence and denunciation.
>
> [104] Section 718.01 thus qualifies this Court's previous direction that it is for the sentencing judge to determine which sentencing objective or objectives are to be prioritized. Where Parliament has indicated which sentencing objectives are to receive priority in certain cases, the sentencing judge's discretion is thereby limited, such that it is no longer open to the judge to elevate other sentencing objectives to an equal or higher priority (*Rayo*, at paras. 103 and 107-8). <u>However, while s. 718.01 requires that deterrence and denunciation have priority, nonetheless, the sentencing judge retains discretion to accord significant weight to other factors (including rehabilitation and *Gladue* factors) in exercising discretion in arriving at a fit sentence, in accordance with the overall principle of proportionality</u> (see *R. v. Bergeron*, 2013 QCCA 7, at para. 37 (CanLII)).
>
> [Emphasis added]

[50] The Supreme Court in *R. v. Marchand*, 2023 SCC 26 further commented saying:

> 28 Parliament has specifically indicated that in sentencing offences involving abuse of children, including child luring, the objectives of denunciation and deterrence must be given primary consideration or "*une attention particulière*" (*Friesen*, at para.101; Criminal Code, s. 718.01). Section 718.01's open textured language limits judicial discretion by giving priority to these objectives, but their primary importance does not exclude

> consideration of other sentencing objectives, including rehabilitation (*Rayo*, at paras. 102-8). The judge can accord significant weight to other factors, but cannot give them precedence or equivalency (*Friesen*, at para. 104, citing *Rayo*, at paras. 103 and 107-8; see also R. v. J. (T.), 2021 ONCA 392, 156 O.R. (3d) 161, at para. 27).

[51] In addition, s. 718.1 of the *Criminal Code* requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 identifies specific sentencing principles which must be considered, including that a sentence should be reduced or increased by mitigating or aggravating circumstances relating to the offence or the offender. Deemed aggravating factors include that the offender abused a person under the age of 18, and the offender, in committing the offence, abused a position of trust or authority in relation to the victim. Further, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances and all available sanctions, other than imprisonment, that are reasonable in the circumstances should be considered for all offenders.

[52] Of course, in considering a fit sentence I am to take into account the nature and extent of the acts and all relevant circumstances relating to them. Any sentencing hearing requires a careful consideration of the unique circumstances of the offender and the offence. It requires a balancing of sentencing objectives, keeping in mind that denunciation and deterrence are to be the primary objectives in this case. The sentencing process is focused on the offender. It must be contextualized and it must be individualized. The focus at sentencing must remain on B.J.L.

[53] The recent Nova Scotia Court of Appeal decisions in *R.* v. *Anderson*, 2021 NSCA 62 ("*Anderson*") and *R.* v. *R.B.W.*, 2023 NSCA 58 direct that when conducting a sentencing hearing for an African Nova Scotian offender, the Court must carefully consider historic injustices associated with racism and weigh the affect on the offender. This is so even where the offence is very serious, as it is here. For example, at paragraphs 145 – 146 of *Anderson*, *supra,* the Court wrote:

> [145] Even where the offence is very serious, consideration must be given to the impact of systemic racism and its effects on the offender. The objective gravity of a crime is not the sole driver of the sentencing determination which must reflect a careful weighing of all sentencing objectives.
>
> [146] The moral culpability of an African Nova Scotian offender has to be assessed in the context of historic factors and systemic racism, as was done in this case. The African Nova Scotian offender's background and social context may have a mitigating effect on moral

> blameworthiness. In *Ipeelee*, the Supreme Court of Canada recognized this principle in relation to Indigenous offenders. It should be applied in sentencing African Nova Scotians. Sentencing judges should take into account the impact that social and economic deprivation, historical disadvantage, diminished and non-existent opportunities, and restricted options may have had on the offender's moral responsibility...

[54] The NSCA detailed how IRCA's should inform the sentencing of African Nova Scotian offenders saying:

> 114 Taking account of IRCA evidence ensures relevant systemic and background factors are integrated in the crafting of a fit sentence, one that is proportionate to the gravity of the offence and the moral culpability of the offender. In its factum, the ANSDPAD Coalition quoted from Professor Maria Dugas' article, "Committing to Justice: The Case for Impact of Race and Culture Assessments in Sentencing African Canadian Offenders" where she discussed the role IRCAs are designed to play in sentencing:
>
> > IRCAs operate from the assumption that a person's race and culture are important factors in crafting a fit sentence. They provide the court with necessary information about the effect of systemic anti-Black racism on people of African descent. They connect this information to the individual's lived experience, articulating how the experience of racism has informed the circumstances of the offender, the offence, and how it might inform the offender's experience of the carceral state.
>
> 115 Sentencing is an inherently individualized process. It is a fundamental duty of a sentencing judge to pay close attention to the circumstances of all offenders in order to craft a sentence that is genuinely fit and proper. What is required in the sentencing of Indigenous offenders applies to offenders of African descent who are also entitled to "an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences..."
>
> …
>
> 118 The "method" employed for sentencing African Nova Scotian offenders should carefully consider the systemic and background factors detailed in an IRCA. It may amount to an error of law for a sentencing judge to ignore or fail to inquire into these factors. A judge does not have to be satisfied a causal link has been established "between the systemic and background factors and commission of the offence..." These principles parallel the requirements in law established by the Supreme Court of Canada in relation to *Gladue* factors in the sentencing of Indigenous offenders. As with Indigenous offenders, while an African Nova Scotian offender can decide not to request an IRCA, a sentencing judge cannot preclude comparable information being offered, or fail to consider an offender's background and circumstances in relation to the systemic factors of racism and marginalization. To do so may amount to an error of law.
>
> 119 As in Mr. Anderson's case, an IRCA can deliver the specific information relevant to the judge's obligation to determine an individualized sentence. However it is the content

not the form that is critical. While the required information does not have to be presented in an IRCA, like *Gladue* reports for Indigenous offenders, IRCAs deliver the "indispensable" content comprehensively and efficiently. IRCAs have become a familiar method for placing systemic and individualized information about African Nova Scotian offenders before sentencing courts in Nova Scotia.

120 IRCAs can support the use of rehabilitation in sentencing, "One of the main objectives of Canadian criminal law..." and "one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world...". IRCAs can provide a foundation on which to build alternatives to incarceration for Black offenders and reduce the over-reliance on imprisonment.

121 As the ANSDPAD Coalition asked this Court to recognize, the social context information supplied by an IRCA can assist in:

- Contextualizing the gravity of the offence and the degree of responsibility of the offender.
- Revealing the existence of mitigating factors or explaining their absence.
- Addressing aggravating factors and offering a deeper explanation for them.
- Informing the principles of sentencing and the weight to be accorded to denunciation and deterrence.
- Identifying rehabilitative and restorative options for the offender and appropriate opportunities for reparations by the offender to the victim and the community.
- Strengthening the offender's engagement with their community.
- Informing the application of the parity principle. "Courts must ensure that a formalistic approach to parity in sentencing does not undermine the remedial purpose of s. 718.2(e)".
- Reducing reliance on incarceration.

[55] The court further said in *RBW, supra:*

106 As held in *Ipeelee*: "...systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her level of moral blameworthiness". A causal link does not need to be established between the systemic and background factors and the commission of the offence before a sentencing judge can consider them. The constrained circumstances of African Nova Scotian offenders may diminish moral culpability and the information in an IRCA can be used as "a foundation on which to build alternatives to incarceration for Black offenders and reduce the over-reliance on imprisonment".

107 The sentencing judge gave proper consideration to R.B.W.'s background and systemic factors and ensured they informed her reasoning. Her reasons reference factors identified in *Anderson* that were relevant to her task:

> Many of the factors identified in *Anderson* are at play in this case, including the fact that the [IRCA] report helps contextualize the gravity of the offence and the degree of [R.B.W.]'s responsibility. He has been impacted by historical deprivation, social and economic deprivation, as well as diminished and virtually non-existent opportunities. Unfortunately, [R.B.W.] was not only a victim of historical impacts of racism, but as a consequence he fell into the control of the State and was abused physically, emotionally, and sexually by persons in positions of authority. The information in the report informs the principles of sentencing and the weight that I should accord to denunciation and general deterrence.
>
> [Emphasis added]

5. Victim Impact Statements

[56] Three Victim Impact Statements were filed:

- The statement of A.N.
- The statement of M.N. M.N. is A.N.'s mother;
- The statement of T.N. T.N. is A.N.'s grandmother.

[57] The Crown read the above Victim Impact Statements into the record. I spoke of A.N.'s statement above. Understandably, the statements of M.N. (mother) and T.N. (grandmother) focussed on the ongoing effect of the assaults on A.N., on them and on the family as a whole. M.N. described behavioural issues that surfaced with A.N. after the assaults, as well as her own significant anxiety and trust issues. As A.N.'s mother, M.N. described feeling guilt because of what happened. T.N. described A.N. as having changed, being angry (lashing out) and hurt. She described feelings of helplessness in trying to support A.N. and help her heal. Clearly, A.N. has tremendous support from her family. As her grandmother said they will always support her and work to help her heal and to heal as a family, together.

[58] Nothing this court can say in this decision will lesson the impact of these offenses on A.N. and her family.

6. Case Law

[59] As noted, it is a principle of sentencing that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. It is always difficult to find cases that are truly similar. Parity must respect individualized sentencing and is to be balanced with all other relevant

principles and circumstances, recognizing that in the present case denunciation and deterrence are of primary focus.

[60] I have carefully reviewed the caselaw presented by counsel, as well as the recent case of *R. v. Shaw*, 2023 NSSC 411 and have also considered counsels' oral submissions in relation to the caselaw.

7. Analysis

[61] The Supreme Court of Canada in *Friesen, supra*, emphasized that protecting children is one of the most fundamental values of Canadian society. They spoke of the pervasive impact of crimes of sexual violence against children:

> [46] Because protecting children is so important, we are very concerned by the prevalence of sexual violence against children. This "pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths" continues to harm thousands more children and youth each year (Canada, Committee on Sexual Offences Against Children and Youths, *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths* (1984), vol. 1, at p. 29 ("Badgley Committee")). In Canada, both the overall number of police-reported sexual violations against children and police-reported child luring incidents more than doubled between 2010 and 2017, and police-reported child pornography incidents more than tripled (Canada, Department of Justice Research and Statistics Division, *Just Facts: Sexual Violations against Children and Child Pornography*, March 2019 (online), at pp. 1-2). Courts are seeing more of these cases (*R. v. M. (D.)*, 2012 ONCA 520, 111 O.R. (3d) 721, at para. 25). Whatever the reason for the increase in police-reported incidents, it is clear that such reports understate the occurrence of these offences (*R. v. L. (W.K.)*, [1991] 1 S.C.R. 1091, at pp. 1100-1101).
>
> …
>
> [65] The protection of children is one of the most fundamental values of Canadian society. Sexual violence against children is especially wrongful because it turns this value on its head. In reforming the legislative scheme governing sexual offences against children, Parliament recognized that children, like adults, deserve to be treated with equal respect and dignity (Badgley Committee, vol. 1, at p. 292; Fraser Committee, vol. 1, at p. 24, and vol. 2, at p. 563). Yet instead of relating to children as equal persons whose rights and interests must be respected, offenders treat children as sexual objects whose vulnerability can be exploited by more powerful adults. There is an innate power imbalance between children and adults that enables adults to violently victimize them (*Sharpe*, at para. 170, per L'Heureux-Dubé, Gonthier and Bastarache JJ.; *L. (D.O.)*, at p. 440, per L'Heureux-Dubé J.). Because children are a vulnerable population, they are disproportionately the victims of sexual crimes (*George*, at para. 2). In 2012, 55 percent of victims of police-reported sexual offences were children or youth under the age of 18 (Statistics Canada,

> *Police-reported sexual offences against children and youth in Canada, 2012* (2014), at p. 6).
>
> [66] Children are most vulnerable and at risk at home and among those they trust (*Sharpe*, at para. 215, per L'Heureux-Dubé, Gonthier and Bastarache JJ.; *K.R.J.*, at para. 153, per Brown J.). More than 74% of police-reported sexual offences against children and youth took place in a private residence in 2012 and 88 percent of such offences were committed by an individual known to the victim (*Police-reported sexual offences against children and youth in Canada, 2012*, at pp. 11 and 14).

[62] *Friesen, supra,* highlights the various *Criminal Code* provisions that indicate Parliament's determination that sexual violence against children is deserving of more serious punishment than if the sexual violence were perpetrated against an adult:

> [116] While sexual violence against either a child or an adult is serious, Parliament has determined that sexual violence against children should be punished more severely. First, Parliament has prioritized deterrence and denunciation for offences that involve the abuse of children (*Criminal Code*, s. 718.01). Second, Parliament has identified the abuse of persons under the age of 18 as a statutory aggravating factor (*Criminal Code*, s. 718.2(a)(ii.1)). Third, Parliament has identified the abuse of a position of trust or authority as an aggravating factor; this is more common in sexual offences against children than in sexual offences against adults (*Criminal Code*, s. 718.2(a)(iii); *L.V.*, at para. 66). Fourth, Parliament has used maximum sentences to signal that sexual violence against persons under the age of 16 should be punished more severely than sexual violence against adults. The maximum sentence for both sexual interference and sexual assault of a victim under the age of 16 is 14 years when prosecuted by indictment and is 2 years less a day when prosecuted summarily. In contrast, the maximum sentence for sexual assault of a person who is 16 years or older is 10 years when prosecuted by indictment and 18 months when prosecuted summarily (see *Criminal Code*, ss. 151(a) and (b), and 271(a) and (b)). This is a clear indication in the *Criminal Code* that Parliament views sexual violence against children as deserving of more serious punishment. These four legislative signals reflect Parliament's recognition of the inherent vulnerability of children and the wrongfulness of exploiting that vulnerability.
>
> [Emphasis Added]

[63] The Supreme Court in *Friesen, supra*, emphasized that courts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle. They said that this will ensure that the proportionality principle serves its function of "ensuring that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused." (para. 75). They further said that wrongfulness and harmfulness impact both the gravity of the offence and the degree

of responsibility of the offender. The court then offered guidance on how courts should give effect to the gravity of sexual offences against children:

> [76] …Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.

[64] With respect to assessing the degree of responsibility of an offender the Supreme Court said:

> [88] Intentionally applying force of a sexual nature to a child is highly morally blameworthy because the offender is or ought to be aware that this action can profoundly harm the child. In assessing the degree of responsibility of the offender, courts must take into account the harm the offender intended or was reckless or wilfully blind to (*Arcand*, at para. 58; see also *M. (C.A.)*, at para. 80; *Morrisey*, at para. 48). For sexual offences against children, we agree with Iacobucci J. that, save for possibly certain rare cases, offenders will usually have at least some awareness of the profound physical, psychological, and emotional harm that their actions may cause the child (*Scalera*, at paras. 120 and 123-24).
>
> …
>
> [90] The fact that the victim is a child increases the offender's degree of responsibility. Put simply, the intentional sexual exploitation and objectification of children is highly morally blameworthy because children are so vulnerable (*R. v. Morrison*, 2019 SCC 15, [2019] 2 S.C.R. 3, at para. 153). As L'Heureux-Dubé J. recognized in *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, "[a]s to moral blameworthiness, the use of a vulnerable child for the sexual gratification of an adult cannot be viewed as anything but a crime demonstrating the worst of intentions" (para. 31, quoting *R. v. L.F.W.* (1997), 1997 CanLII 10868 (NL CA), 155 Nfld. & P.E.I.R. 115 (N.L.C.A.), at para. 117, per Cameron J.A. ("*L.F.W. (C.A.)*")). Offenders recognize children's particular vulnerability and intentionally exploit it to achieve their selfish desires (*Woodward*, at para. 72). We would emphasize that the moral blameworthiness of the offender increases when offenders intentionally target children who are particularly vulnerable, including children who belong to groups that face discrimination or marginalization in society.
>
> [91] These comments should not be taken as a direction to disregard relevant factors that may reduce the offender's moral culpability. The proportionality principle requires that the punishment imposed be "just and appropriate . . ., and nothing more" (*M. (C.A.)*, at para. 80 (emphasis deleted); see also *Ipeelee*, at para. 37). First, as sexual assault and sexual interference are broadly-defined offences that embrace a wide spectrum of conduct, the offender's conduct will be less morally blameworthy in some cases than in others. Second, the personal circumstances of offenders can have a mitigating effect. For instance, offenders who suffer from mental disabilities that impose serious cognitive limitations will

> likely have reduced moral culpability (*R. v. Scofield*, 2019 BCCA 3, 52 C.R. (7th) 379, at para. 64; *R. v. Hood*, 2018 NSCA 18, 45 C.R. (7th) 269, at para. 180).
>
> [92] Likewise, where the person before the court is Indigenous, courts must apply the principles from *R. v. Gladue*, [1999] 1 S.C.R. 688, and *Ipeelee*. …
>
> [Emphasis added]

[65] The Supreme Court of Canada in *Marchand, supra,* reiterated that the personal circumstances of the offender can have a mitigating effect on blameworthiness:

> 73 The personal circumstances of the offender can also have a mitigating effect on blameworthiness (*Friesen*, at paras. 91-92). In the context of determining the appropriate sentence overall, the sentencing judge in this case accounted for Mr. Bertrand Marchand's age at the time of the events, his stable family life, and the fact that he had maintained stable employment for around three years. Mr. Bertrand Marchand overcame a substance use disorder during adolescence. At the time, this caused him health problems and panic attacks (sentencing reasons, at para. 22). An offender might have a mental disability or substance use disorder that imposes serious cognitive limitations, such that their moral culpability is reduced (*Friesen*, at para. 91; see, e.g., *Hood*, at para. 180; *Melrose*, at paras. 223-35; R. v. Osadchuk, 2020 QCCQ 2166, at paras. 51-55 (CanLII); *R. v.* Deren, 2021 ABPC 84, at paras. 44 and 51 (CanLII); R. v. Sinclair, 2022 MBPC 40, at paras. 15 and 67 (CanLII); *Wolff*, at para. 65). However, this factor is not as mitigating in Mr. Bertrand Marchand's circumstances as his substance use did not overlap with the material time period (unlike *Sinclair*, at para. 67; *Wolff*, at para. 65).

[66] The court in *Friesen, supra,* also set out a number of significant factors to consider in determining a fit sentence for sexual offences against children. The court said:

> [121] We also wish to offer some comments on significant factors to determine a fit sentence for sexual offences against children. These comments are neither a checklist nor an exhaustive set of factors. Nor are they intended to displace the specific lists of factors that provincial appellate courts have set out (see, e.g., *Sidwell*, at para. 53; *R. v. A.B.*, 2015 NLCA 19, 365 Nfld. & P.E.I.R. 160, at para. 26). Instead, our aim is to provide guidance on specific factors that require "the articulation of governing and intelligible principles" to promote the uniform application of the law of sentencing (*Gardiner*, at pp. 397 and 405).

[67] The court then discussed the following factors:

- Likelihood to Reoffend
- Abuse of a Position of Trust or Authority
- Duration and Frequency of Sexual Violence

- Age of the Victim
- Degree of Physical Interference

[68] The Court in *Friesen, supra*, described as "clear" its message 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)

[69] It is with the comments of the Supreme Court of Canada in *Friesen*, *supra*, and *Marchand, supra*, in mind that I turn to the principles of sentencing, with deterrence and denunciation being the foremost in my mind.

Mitigating Factors

[70] There are very limited mitigating circumstances.

[71] B.J.L. appears to be working toward positive changes in his life. He has taken courses since being incarcerated including a substance abuse program, and two segments toward his GED certificate, which he is on track to attain in May. Some of the planned programming, through no fault of his, has been delayed including the Respectful Relationships and Anger Management programs. They are scheduled to start this week. He has the support of his mother, although currently she is facing considerable challenges herself.

[72] As was noted in the IRCA, B.J.L. maintains his innocence with regard to the offence for which he is being sentenced. B.J.L. is entitled to maintain his innocence. This is certainly not an aggravating factor whatsoever. It simply indicates it is not a mitigating circumstance that can be taken into account.

[73] In addition, I take into account some factors that do not necessarily fall under mitigating circumstances. I note that B.J.L. has health issues as referenced in the PSR and the IRCA. His history also indicates he has used drugs and alcohol extensively since an early age, including in 2019. I am not suggesting on the evidence before me that this makes him less responsible. B.J.L. is still a relatively young man, a man who has lost much. He has lost the support of most of his family (including contact with his children) and his friends. In essence, he is socially isolated from his family and community.

Cultural Background

[74] I have considered B.J.L.'s cultural background as an African Nova Scotian, his personal circumstances and the impact of systemic racism.

[75] The court in *Anderson, supra,* said there is no need for a finding of a causal link between an African Nova Scotian offender's background and the commission of the offence, prior to considering the systemic and background factors detailed in an IRCA. In short, proper attention must be given to the circumstances set out in the IRCA. The information in the IRCA report for B.J.L. informs the principles of sentencing that I must consider. Justice Campbell said in *R* v *Fraser,* 2022 NSSC 215, that *Anderson*, *supra,* demands that the Court pay close "contextualizing attention" (paragraph 57) to mitigating and aggravating factors. For example, the relative absence of mitigating factors that we see here, should be considered in the context of B.J.L. as an African Nova Scotian male.

[76] B.J.L. has been affected by the historic impacts of racism. B.J.L.'s background as set out in the IRCA details a tumultuous upbringing. As a young person he experienced housing instability, poverty, mental illness in the household and family breakdown. He was essentially fending for himself, living away from his parents and siblings at age 16. He saw and experienced trauma and violence at an early age, including having a close friend die from gun violence.

[77] He became entrenched in crime and substance use at a very early age. He turned to selling drugs to support himself and fell under the control of the province and reports suffering abuse, including sexual abuse, in the very place that was supposed to help him. Unfortunately, a significant criminal record followed. B.J.L. has had no real gainful employment in his life to date. His background indicates that he was not presented with educational opportunities.

[78] Similarly, criminal records must be considered in the context of the IRCA, in the context of B.J.L.'s background. An IRCA is used to inform the sentencing principles that govern the sentencing process.

Aggravating Factors

[79] A criminal record that is recent and factually analogous may indicate that previous sentences have done nothing to assist in rehabilitation or in deterring the offender from the commission of further offenses: *R v Naugle,* 2011 NSCA 33 at para 47. B.J.L. has an extensive criminal record including violence, however, it must be viewed in the context of his very difficult background. I note that this is his first conviction for sexual assault.

[80] There are a number of aggravating circumstances here. The offence involved abuse of a child, a person under 18 years of age (s. 718.2 (a)(ii.1). B.J.L. was in a position of trust to AN when the sexual assaults occurred (s. 718.2(a)(iii)). AN's family and B.J.L.'s family were very close, the children considered each other brothers and sisters. B.J.L. gave evidence that he had known A.N. her whole life and said that as A.N.'s father was not around, he tried to play father figure for she and her siblings. The court in *Friesen, supra,* had the following to say about abuse of a position of trust:

> [125] We also wish to offer some comments on the factor of the abuse of a position of trust (*Criminal Code*, s. 718.2(a)(iii)). Trust relationships arise in varied circumstances and should not all be treated alike (see *R. v. Aird*, 2013 ONCA 447, 307 O.A.C. 183, at para. 27). Instead, it makes sense to refer to a "spectrum" of positions of trust (see *R. v. R.B.*, 2017 ONCA 74, at para. 21 (CanLII)). An offender may simultaneously occupy multiple positions on the spectrum and a trust relationship can progress along the spectrum over time (see *R. v. Vigon*, 2016 ABCA 75, 612 A.R. 292, at para. 17). In some cases, an offender's grooming can build a new relationship of trust, a regular occurrence in child luring cases where children are groomed by complete strangers over the Internet, or move an existing trust relationship along the spectrum. Even where grooming does not exploit an existing relationship of trust or build a new one, it is still aggravating in its own right.
>
> [126] Any breach of trust is likely to increase the harm to the victim and thus the gravity of the offence. As Saunders J.A. reasoned in *D.R.W.*, the focus in such cases should be on "the extent to which [the] relationship [of trust] was violated" (para. 41). The spectrum of relationships of trust is relevant to determining the degree of harm. A child will likely suffer more harm from sexual violence where there is a closer relationship and a higher degree of trust between the child and the offender (see *R. v. J.R.* (1997), 1997 CanLII 14665 (NL CA), 157 Nfld. & P.E.I.R. 246 (N.L.C.A.), at paras. 14 and 18). This is likely to be the case in what might be described as classic breach of trust situations, such as those involving family members, caregivers, teachers, and doctors, to mention a few.
>
> …
>
> [129] The abuse of a position of trust is also aggravating because it increases the offender's degree of responsibility. An offender who stands in a position of trust in relation to a child owes a duty to protect and care for the child that is not owed by a stranger. The breach of the duty of protection and care thus enhances moral blameworthiness (*R. v. S. (W.B.)* (1992), 1992 CanLII 2761 (AB CA), 73 C.C.C. (3d) 530 (Alta. C.A.), at p. 537). The abuse of a position of trust also exploits children's particular vulnerability to trusted adults, which is especially morally blameworthy (*D. (D.)*, at paras. 24 and 35; *Rayo*, at paras. 121-22).
>
> [130] We would thus emphasize 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. …
>
> [Emphasis Added]

[81] A.N. was vulnerable due to her young age and her frequent contact with B.J.L. and his family. The sexual assaults occurred over a period of approximately one year. A.N. was 7 and B.J.L. was 26 years of age when the assaults occurred.

[82] B.J.L.'s actions caused significant harm to A.N. and her family as noted above in the Victim Impact Statements. The psychological damage inflicted on A.N. by B.J.L. is significant and impossible to quantify.

[83] I now turn to consideration of the factors applicable to sentencing in relation to sexual assault of a person under 18 years of age. I must give primary consideration to denunciation and deterrence (s. 718.01 of the *Criminal Code*) while also giving due consideration to the other sentencing objectives. The sentence should seek to deter B.J.L. as well as "others from committing offences" (s. 718(b) of the *Criminal Code*). Of course, rehabilitation and reformation also play a role in crafting the correct disposition. Based on the evidence, I consider B.J.L. to have rehabilitative prospects.

[84] I must also be mindful of the fundamental principle in sentencing found in s. 718.1 of the *Criminal Code* that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The Court of Appeal in *R. v. RBW*, *supra*, said the following about proportionality and rehabilitation:

> 92 I am satisfied the sentencing judge did what sentencing judges are required to do: she determined proportionality through an individualized lens. As held by the Supreme Court of Canada in *Parranto*, this was the correct approach:
>
> > [...] Individualization is central to the proportionality assessment. Whereas the gravity of a particular offence may be relatively constant, each offence is "committed in unique circumstances by an offender with a unique profile". (para. 53) This is why proportionality sometimes demands a sentence that has never been imposed in the past for a similar offence. The question is always whether the sentence reflects the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case (para. 58).
>
> 93 The sentencing judge did not treat R.B.W.'s rehabilitation as the primary sentencing objective. She appropriately took account of his strong rehabilitative prospects in her balancing of all the sentencing principles. Her approach reflects the importance of rehabilitation in the sentencing calculus, as articulated by the Supreme Court of Canada in *Lacasse*:
>
> > [4] One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish

> Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate.

[85] I am also cognizant of the principle of restraint set out in s. 718.2(e) which states:

> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[86] Denunciation and deterrence are pressing in the present circumstances and they are the primary considerations per s. 718.01. The actions of B.J.L. must be strongly denounced. This case illustrates the need for a strong message of both general and specific deterrence.

[87] I cannot accept the Defence recommendation that a sentence of 2.5 to 3 years is a fit and proper sentence, having regard to the circumstances of the offences and of this offender. Even with all of the considerations I have noted from the IRCA, there is no way to deny the seriousness of this offence and the fact that B.J.L.'s conduct is highly blameworthy. The sexual assaults against A.N., a child, were serious and demand a significant period of imprisonment.

[88] The sentence proposed by B.J.L. is simply not adequate considering all of the aggravating features, including the abuse of a position of trust, the age of A.N., the frequency and seriousness of the sexual incidents, the harm to A.N. and the abhorrence that society has of sexual offences against young persons.

[89] In considering the range of sentences in the various cases and the aggravating and mitigating factors, the circumstances of the offence, and keeping in mind the unique circumstances of this offender as set out in the IRCA and considered above, I find that a just, fit and proper sentence for B.J.L. is a term of imprisonment of 4.5 years (54 months) for each of the counts, to be served concurrently. A sentence of less than 4.5 years in this case would fail to recognize the seriousness of the offences. I impose a sentence of 4.5 years (54 months) in federal custody, concurrent on each of the section 151 offences.

[90] I am of the view that as the three s.151 offences involved the same victim, occurred during the same time period (same year), and were part of the same linked series of acts or "a single criminal adventure" (*Friesen, supra*, at para. 155) the

sentences should be concurrent. There is a close and inextricable nexus between the offences on the facts of this case.

[91] I find that this global sentence adequately meets the primary objectives of denunciation and deterrence, takes into account the unique personal circumstances of B.J.L.'s background and experiences as an African Nova Scotian male as outlined in the IRCA, and also his prospects of rehabilitation.

[92] Counsel advised the court that B.J.L. was recently sentenced on unrelated charges in Provincial Court. His remand credit was utilized in relation to this Provincial Court sentence. While no remand credit remains, I recognize that B.J.L. was on remand at a difficult time when rotational lockdowns were commonplace.

[93] The IRCA Report indicates that B.J.L. would benefit from a number of programs and specific types of assistance including being connected to a mental health clinician while incarcerated, accessing information and support around substance use, being given opportunities to continue his education, continuing with a program supporting anger management. Dr. Hamilton-Hinch also set out the various other programming and types of assistance that would be helpful to B.J.L. on completion of his sentence. I fully support these recommendations. When this sentencing decision is transmitted to Correctional Services they will be made aware of the court's view, which is that Correctional Services should use all reasonable efforts to provide B.J.L. with the opportunity, while incarcerated, to engage in such programming to prepare himself for life in the community when he is released. A copy of the IRCA should be sent to the institution in which B.J.L. is placed.

[94] The sentence of 4.5 years is to be served consecutive to the total period of imprisonment of any sentence B.J.L. is now serving.

[95] Additionally, I impose the following orders:

- Primary-designated-offence DNA Order, in accordance with s. 487.051 of the *Criminal Code*;
- Firearms Prohibition Order for 10 years in accordance with s. 109 of the *Criminal Code*. I adopt the reasoning of Gorman J.P.C. in *R. v. H. (L.)*, [2002] N.J. No. 59, and of the New Brunswick Court of Appeal in *R. c. B. (G.)*, 2005 NBCA 72, that sexual crimes against minors are inherently violent. The NBCA said at para. 10: "… The child's sexual integrity has been compromised, and this form of sexual abuse can only be considered a form of violence in and of itself...";

- *Sexual Offender Information Registration Act* (SOIRA) Order (20 years) in accordance with ss. 490.012 and 490.013 of the *Criminal Code*.
- A s. 161 prohibition order for a period of 10 years to include the conditions found in s. 161(1) (a) and (b) as follows:

> (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;

[96] I am satisfied, in relation to the s. 161 prohibition order, that there is an evidentiary basis to conclude B.J.L. poses a risk to children and the above conditions are a reasonable attempt to minimize the risk (*R v KRJ*, 2016 SCC 31 and *R v Miller* 2017 NLCA 22). These were serious offences and B.J.L. has a significant criminal history that includes violence.

[97] In this case B.J.L. has no source of income and has debt. The Crown did not seek a victim surcharge and I am not ordering one in the circumstances I have noted.

Jamieson, J.