SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Guthro*, 2025 NSSC 281

Date: 20250730
Docket: Pic No. 538617
Registry: Pictou

Between:

His Majesty the King

v.

Douglas Richard Guthro

Sentencing Decision

Judge: The Honourable Justice Frank P. Hoskins

Heard: July 30, 2025, in Pictou, Nova Scotia

Counsel: T.W. (Bill) Gorman, for the Crown
Pavel Boubnov, for the Accused

By the Court:

Removal of Publication Ban: Section 486.4 of the *Criminal Code*

[1] On April 29, 2024, a publication ban was imposed pursuant to s. 486.4 of the *Criminal Code*, which prohibits publication, or other transmission of information that could identify the victims in the proceeding. On July 15, 2024, the Crown applied for an application to remove the publication ban at the request of the three victims. Judge Bryna Hatt of the Provincial Court of Nova Scotia granted the application and accordingly the publication ban was removed.

[2] On February 29, 2025, prior to the *Criminal Code* s. 606 plea inquiry, the Crown reaffirmed that the victims did not want a publication ban imposed. The victims, again, confirmed their desire not to have a publication ban prior to the commencement of the sentencing proceeding.

Overview

[3] Douglas Guthro pleaded guilty to multiple sexual related offences against his three biological children, specifically, his two daughters and son.

[4] The offences arise from vile and disturbing circumstances where Mr. Guthro sexually abused each of his three young children numerous times over extended periods. An exact number of occasions cannot be determined, but each victim was repeatedly abused for years at their father's pleasure. The first victim, the oldest daughter, was almost six years old when the abuse began, and 13 years of age when it ended. The second victim was six or seven years old when the abuse began and it ended when he was 11 or 12 years old. The youngest child was between six and ten when the abuse began and it ended when she was 16 years old. The abuse of all three children occurred when they were very young and vulnerable.

[5] Mr. Guthro inflicted egregious acts of sexual abuse on his three young children. Each victim endured years of horrific acts of sexual abuse at the hands of their father as described in the Agreed Statements of Facts, Exhibit 1. This was a flagrant breach of trust between a parent and child, which significantly enhances Mr. Guthro's moral blameworthiness. Mr. Guthro abused his role as a parent and failed to meet his obligations to protect his children from harm, and to ensure their safety and wellbeing.

[6] The magnitude of his offending is staggering. The harm that he has caused to his three children is immeasurable, as described in their victim impact statements.

[7] Mr. Guthro's abuse of his three children calls for strong public condemnation.

[8] Notwithstanding Mr. Guthro's egregious acts of sexual abuse of his three young children, the sentence that this court imposes must derive from the application of the purpose and principles of sentencing, rather than from a reactive, emotional, impulse. In other words, a just and appropriate sentence is derived from an objective, measured and reasoned determination of an appropriate punishment which properly reflects the gravity of the offence and the moral culpability of the offender. Vengeance and anger have no place in sentencing.

[9] The offences are historical in nature but clearly left an indelible mark on each of Mr. Guthro's three children, who continue to feel the deep psychological impact of his behaviour towards them while they were in his custody and care.

[10] The issue in this sentencing hearing is the determination of a just and appropriate disposition for the offences and the offender, Mr. Guthro. Sentencing is highly contextual and a necessarily individualized process. This issue is particularly challenging because Mr. Guthro is 87 years old, with a short life expectancy because of his medical condition.

[11] The Crown and defence are far apart in their positions as to the appropriate disposition. The Crown submits that a global sentence in the range of 17 to 22 years would be a fit and proper punishment. However, in view of the totality principle, which includes consideration of Mr. Guthro's advanced age, medical condition, and life expectancy, the Crown recommends a sentence of 9 to 12 years.

[12] The defence submits that because of Mr. Guthro's advanced age, his medical condition, and short life expectancy, a term of imprisonment in the range of two years, to be served in the community under a conditional sentence order, followed by a three-year term of probation, is a fit and proper punishment.

[13] In assessing the issue of what is the just and appropriate disposition for the offences and offender, I have carefully considered and reflected on the following: the circumstances surrounding the commission of the offences and the offender; the aggravating and mitigating factors; the impact of the offences on the victims; the purpose and principles of sentencing as set out in s. 718 of the *Criminal Code,* particularly the principles in respect to child sexual offences*;* the range of sentences

involving child sexual abuse offences; the appropriateness of a conditional sentence order; the submissions of counsel; and the requested ancillary orders.

The Offences

[14] Mr. Guthro was charged with a 17-count indictment, of which he pleaded guilty to eight counts. Following a comprehensive plea inquiry under s. 606 of the *Criminal Code*, Mr. Guthro's guilty pleas were accepted to the following counts:

- **Count 1:** between January 1, 1971, and December 31, 1981, at or near Pictou County, Nova Scotia, did have sexual intercourse with Susan Farrell, a female person not his wife, without her consent, contrary to s. 144 of the *Criminal Code.*
- **Count 4:** between January 1, 1971, and December 31, 1981, at or near Pictou County, Nova Scotia, did have sexual intercourse with Susan Farrell, while knowing Susan Farrell was his daughter, contrary to s. 150 of the *Criminal Code.*
- **Count 5:** between January 1, 1979, and December 31, 1984, at or near Pictou County, Nova Scotia, did have sexual intercourse with Sheri Colbert, a female person not his wife, with her consent, contrary to s. 144 of the *Criminal Code.*
- **Count 8:** between January 1, 1979, and December 31, 1984, at or near Pictou County, Nova Scotia, did have sexual intercourse with Sheri Colbert, while knowing Sheri Colbert was his daughter, contrary to s. 150 of the *Criminal Code.*
- **Count 9:** between January 1, 1985, and December 31, 1990, at or near Pictou County, Nova Scotia, did for a sexual purpose touch Sheri Colbert, a person under the age of 14 years directly with parts of his body, to wit: his hands, his penis, and his lips, contrary to s. 151 of the *Criminal Code.*
- **Count 12:** between January 1, 1985, and December 31, 1990, at or near Pictou County, Nova Scotia, did have sexual intercourse with Sheri Colbert, while knowing that Sheri Colbert was his daughter, contrary to s. 155 of the *Criminal Code.*
- **Count 14:** between January 1, 1977, and December 31, 1983, at or near Pictou County, Nova Scotia, did indecently assault Frederick Douglas Robertson (formerly known as Douglas Guthro Jr.), a male person, contrary to s. 156 of the *Criminal Code.*
- **Count 16:** between January 1, 1980, and December 31, 1983, at or near Pictou County, Nova Scotia, did commit a sexual assault on Fredrick Douglas Robertson (formerly known as Douglas Guthro Jr.), contrary to s. 246.1 of the *Criminal Code.*

[15] These are very serious indictable offences as reflected in the maximum punishments for each offence which ranges from 10 to 14 years to life imprisonment.

Maximum Sentences

[16] Maximum sentences help determine the gravity of the offence and thus the proportionate sentence. As explained in *R. v. Friesen*, 2020 SCC 9, the gravity of the offence includes both the subjective gravity, namely the circumstances that surround the commission of the offence, and objective gravity. The maximum sentence the *Criminal Code* provided for offences determines objective gravity by the "relative severity of the crime" [*M. (C.A.),* at para. 36]. Maximum penalties are one of Parliament's principal tools to determine the gravity of the offence [at para. 96]. In this case, the following maximum sentences reflect the seriousness of the offences for which Mr. Guthro pleaded guilty:

- Section 144: life imprisonment.
- Section 150: 14 years' imprisonment
- Section 151: ten years' imprisonment
- Section 155: 14 years' imprisonment
- Section 156: ten years' imprisonment
- Section 246.1: ten years' imprisonment

Circumstances Surrounding the Offences

[17] The parties, the Crown and Defence, have proffered an Agreed Statement of Facts, Exhibit 1, which states the following:

1. That Douglas Richard Guthro Sr. (hereinafter referred to as the "Accused") has a date of birth of July 28, 1938.
2. That the accused is the father of:
    a) Susan Farrell (DOB: November 21, 1968)
    b) Frederick Douglas Robertson, formerly known as Douglas Guthro Jr. (DOB: November 22, 1971) and
    c) Sheri Colbert (DOB: June 25, 1975)
3. That the Guthro family home (so called) was situated at 22 Greenhill Road, Alma, Pictou County, Nova Scotia.
4. The Guthro family that resided at 22 Greenhill Road in Alma, Pictou County, Nova Scotia were:
    a) The accused
    b) Margaret Guthro (deceased October 25, 2019)
    c) Susan Farrell
    d) Frederick Douglas Robertson, formerly known as Douglas Guthro Jr.
    e) Sheri Colbert.

Victim - Susan Farrell

5. That Susan Farrell's first memory of sexual abuse at the hands of the accused was when she was very young. It was before she started school and she was almost 6 when she started school.

6. The accused would get in bed with Susan Farrell in the Guthro family home at 22 Greenhill Road, Alma, Pictou County, Nova Scotia. Typically, it would commence with the accused reading children's story books with Susan Farrell. Once reading the book was concluded, the accused would then sexually touch Susan Farrell. The sexual touching by the accused included oral sex performed by the accused on Susan Farrell and digital penetration. The sexual abuse of Susan Farrell by the accused at the Greenhill road address continued on a regular basis and most often occurred on Monday nights when Margaret Guthro was outside the residence. The accused referred to these encounters as "cozy time".
7. The sexual touching and oral sex, the accused to the victim, Susan Farrell, eventually changed as Susan Farrell got older, to her performing oral sex on the accused.
8. Oral sex in this Agreed Statement of Facts is sexual activity in which the mouth, lips and tongue are used to stimulate your partner's genitals and includes fellatio and cunnilingus.
9. That the accused instructed Susan Farrell not to tell anyone, as if anyone learned of what was happening, it would break up the family.
10. The sexual touching progressed to vaginal intercourse in the summer when Susan Farrell was 10 or 11 years of age. The initial act of sexual intercourse occurred in Ontario, Canada. Prior to vaginal intercourse having taken place between the accused and Susan Farrell, the accused on multiple occasions, told Susan Farrell that he was going to "put myself up in your belly." This would be typically in conjunction with when the accused was digitally penetrating Susan Farrell's vagina.
11. After the Guthro family trip in Ontario, and after the initial act of vaginal intercourse, it became a regular occurrence in the Guthro family home on Greenhill Road in Alma, Pictou County. The typical pattern is the accused would come into Susan Farrell's bedroom, he would undress, he would then instruct Susan to get undressed, and he would have vaginal intercourse with her.
12. Oral sex by the accused to Susan Farrell would include the accused putting his mouth on Susan Farrell's vagina, licking her vagina, and putting his tongue inside her vagina. This would result in the accused becoming sexually aroused, and as a result of his sexual arousal, he would then manually masturbate himself to ejaculation.
13. The oral sex performed by Susan Farrell on the accused typically involved the accused rolling onto his back, naked, then asking Susan Farrell to perform oral sex on him, in which Susan Farrell was instructed to place her mouth over the accused erect penis. As Susan Farrell got older, he would hold the sides of her head with his hands; and when she became aware that he was going to ejaculate, she would pull her mouth away, and he would ejaculate on her face and body.
14. When the sexual abuse between the accused and Susan Farrell progressed to vaginal intercourse, it would commence with digital penetration, then the accused would announce he was going to put himself inside her, and then he would place his penis inside her vagina and thrust until he ejaculated.

15. That in addition to oral sex being performed by Susan Farrell on the accused in Susan Farrell's bedroom, it also occurred in the sunroom of the 22 Greenhill Road, Pictou County, Nova Scotia, which involved the accused rubbing Susan Farrell's back and buttocks, placing his hand between her legs in her groin area, and then he would guide her face and head to his exposed erect penis, where she would perform oral sex on him.
16. It was not until Susan Farrell was 13 years of age, in a sexual education class at school, when the teacher was instructing the class on sexual abuse and incest, that she recognized that this was what was happening to her. Subsequently, when the accused attempted further sexual abuse with Susan Farrell, she replied, "no, I do not want to do this." The accused responded, "that's fine, it's your choice, but you can always change your mind."
17. That as an adult, when Susan Farrell was approximately 30 years of age, following the birth of her first child, she spoke to the accused and told him, "if you ever touch my child or children like you touched me, I will put you in jail." Following an initial silence, the accused then said, "fine. I would never do that."
18. That Susan Farrell did not disclose to anyone the sexual abuse at the hands of the accused until approximately 2011-2012 when she spoke with her sister, Sheri Colbert; and as a result of that conversation, she confirmed that both she and her sister, Sheri, had been sexually abused by their father. Prior to this, Susan Farrell was unaware her sister had been sexually abused by the accused.
19. Susan Farrell did not come forward to the police until after the 6th day of November 2023 when she learned that her brother, Frederick Robertson (formerly Douglas Guthro Jr.) had attended the Pictou RCMP to report sexual abuse at the hands of the accused, his father. Her brother, Doug Jr. subsequently spoke to Susan Farrell, and she in turn agreed to provide a statement to the police as to what had occurred to her between the 1st of January 1971 and the 31st day of December 1981.

Victim - Frederick Douglas Robertson (formerly known as Douglas Guthro Jr.)

20. Frederick Douglas Robertson was 6 or 7 years old when the sexual abuse at the hands of his father commenced. The abuse lasted for a period of five or six years.

21. The sexual abuse included the accused sexually touching Frederick Douglas Robertson's genitals and Frederick Douglas Robertson performing oral sex on the accused. The accused also performed oral sex on Frederick Douglas Robertson.
22. That the accused, when Frederick Douglas Robertson was performing oral sex on the accused, would withdraw his penis from Frederick Douglas Robertson's mouth and ejaculate on his face and body.
23. That the sexual abuse of Frederick Douglas Robertson happened multiple times between 1977 and 1983.
24. The sexual abuse of Frederick Douglas Robertson, by the accused, happened in multiple locations, but the majority of time it would be in Frederick Douglas Robertson's bedroom at 22 Greenhill Road in Alma, Pictou County, Nova Scotia. In addition to being in Frederick Douglas Robertson's bedroom, it also occurred

on a frequent basis in the Guthro family van which had been converted to a camper having a bed in the rear of the van.

25. That Frederick Douglas Robertson, between the 1st day of January 1977 and the 31st day of December 1983, was summoned into the accused's bedroom where the accused was naked and stroking his own penis with his hand. That Frederick Douglas Robertson was instructed and performed oral sex on the accused until he ejaculated.
26. That the sexual abuse went on for years, but he did not tell anyone, as he was fearful of what people would think and say, and it typically happened when his mother and sisters would not be at the family home.
27. That the accused would tell his son, Frederick Douglas Robertson, that "this is us and it is between us." That Frederick Douglas Robertson was 12 or 13 years old when he refused to allow it to occur anymore, and despite his fear and being subjected to physical violence at the hands of the accused, he never participated in any further sexual acts with the accused.
28. That Frederick Douglas Robertson, in November 2023, made a complaint to Pictou County District RCMP reporting that he had been sexually abused by his father, the accused. He then provided a formal audio/video statement to the police.
29. Frederick Douglas Robertson, in November 2023, after providing the statement to police, then told his sisters, Susan Farrell and Sheri Colbert, who in turn told him they also had been sexually abused by the accused.

Victim – Sheri Colbert

30. That Sheri Colbert was sexually abused by the accused, her father, between the 1st day of January 1979 and the 31st day of December 1990.
31. That Sheri Colbert cannot precisely say the first time it occurred, however, she was very young and that she did not like it, and it hurt.
32. She believes it to have been when she was between six and ten years of age and has specific memory of pain and burning in her vaginal area when she was urinating.
33. That the accused would instruct her as to what he liked and how she was to act and perform. That he liked to have his penis stroked and he liked to be kissed. That he liked her to play with his penis, suck on his penis, play with his testicles, and kiss his testicles. That he would guide her and coach her on how he liked her to suck on his penis and claimed that he was showing her different ways to do things for when she had a boyfriend in the future.
34. That she had sexual intercourse multiple times with the accused that began when she was between six and ten years of age. Typically, he would ask her where on her body that she wanted the accused to ejaculate. Specifically, he would ask whether he would penetrate her vagina with his penis and ejaculate inside her vagina or if she would rather he ejaculate on the outside of her body. The accused told Sheri Colbert that he liked to ejaculate on her belly button.
35. The most frequent location of the sexual abuse was in the accused's bedroom at 22 Greenhill Road, Alma, Pictou County, Nova Scotia. A typical scenario would be Sheri Colbert walking down the hall in the family home, that the accused would be laying on his bed in his bedroom, naked, stroking his penis. He would call out

her name, and she would then enter his bedroom. He would instruct her to take her clothes off, go get a face cloth, and return to his bed where he would wipe the exterior and interior of her vagina; he would tell her she was clean, and he would then hold her and tell her she was his "special little girl".

36. The accused would guide her hands to his penis and tell her this was their little secret and that her mother would be mad if she knew. The accused would instruct Sheri Colbert to sit on him. Vaginal intercourse would follow when Sheri Colbert would sit or be placed on the accused's penis while the accused lay on his back as Sheri Colbert straddled him. The vaginal intercourse would end when the accused ejaculated, and the accused ejaculated either in Sheri Colbert's vagina, on her back, on her stomach, or on her face.
37. Sheri Colbert recalls once during this period of time, the accused performing anal intercourse on her once. She was told to lay on her stomach, that he was going to try something new, and she cried the whole time.
38. The accused had other pornographic magazines which were hidden in a bedside table beside his bed in his bedroom, and he would take out that pornography and review it with her.
39. When Sheri Colbert was 12 years of age, she had to have sexual intercourse with the accused before he would assist her in preparing a birthday cake for her birthday. The accused was laying on the couch in the sunroom; and as she walked by, he touched her leg, and then his hand moved up her thigh under her underwear, and he inserted his fingers into her vagina.
40. The accused then told Sheri Colbert he would help her with the birthday cake in a minute, and then he proceeded to remove his shorts and underwear; and she was instructed to place his erect penis in her mouth and to suck on his penis. The accused would place his hands on the back of Sheri Colbert's head and push her head down while he thrust his penis into her mouth. The matter would conclude once the accused ejaculated.
41. That as Sheri Colbert got older, the accused became more sexually aggressive with her and would unannounced, while she was in other rooms of the house watching TV, place his erect penis right in her face and instruct her to place his penis in her mouth and to suck his penis and feel his testicles until he ejaculated.
42. That when Sheri Colbert was 14 years of age, she was in her own bed, in her own bedroom, sleeping; and the accused came into her bed, subsequently rubbed her back, pulled back the covers, instructed her to get undressed, and proceeded to have vaginal intercourse with her. This was the only time that the accused ever had intercourse with Sheri Colbert in her bed.
43. That on numerous occasions, the accused said to Sheri Colbert, "if you keep eating and gaining weight, the boys will not like you anymore… this is why I have to do these things to you, because no one else will…"
44. That the sexual abuse stopped when Sheri Colbert was 16 years of age when the accused approached her while she was sitting in a chair watching TV, and the accused was standing beside her poking her cheek with his erect penis. The accused led Sheri Colbert to the couch in the sunroom where he lay down and Sheri Colbert then performed oral sex on the accused until he ejaculated. Sheri

> Colbert then announced and said to the accused, “enough. No more.” It never occurred beyond that date when Sheri Colbert was 16 years old and refused to participate any longer.

[18] The Agreed Statement of Facts, Exhibit 1, describes the sexual offences committed by Mr. Guthro against his three young children which were appalling acts of egregious sexual abuses carried out against extremely vulnerable children for years. This was, indeed, an extreme breach of trust between a parent and child. Each child endured the infliction of constant abuse during their childhood, which robbed them of a normal and healthy childhood.

Circumstances Surrounding the Offender

[19] In addition to sentencing submissions made by counsel, the Presentence report (PSR), encapsulates the personal background information of Mr. Guthro. The author of the report (the writer) addresses the following: Family background; Educational/ Training; Employment; Financial Situation; Health and Lifestyle; Interview with the Victims; Offender Profile; Corrections History; and Assessment of Community Alternatives/ Resources.

[20] The PSR is positive overall. Apart from the current offences, Mr. Guthro seemingly lived a pro-social life. He has never been convicted of a criminal offence. He was gainfully employed until he became disabled from working.

[21] In the PSR Mr. Guthro accepts responsibility for the offences and expresses his apologies to the victims.

[22] According to the PSR, Mr. Guthro is 87 years of age. He was born on July 28, 1938, in New Glasgow, Nova Scotia. He is the son of John Guthro, who passed away in 1959 at 67 years of age, and Laura Guthro, who passed away in 1987 at 83. Mr. Guthro’s father was employed at Standard Clay Products Limited, and his mother was a homemaker. He informed the writer that he was the eighth of 12 children, including Clem, Nicholas, Vincent, Vernon, Daniel, Clifford, Alex, May, Isabel, Laura, and Gloria. His mother also raised his cousin, whom he considers to be one of his brothers.

[23] With respect to Mr. Guthro’s upbringing, he reported to the writer that his parents were married for over 40 years, up until his father’s death. He said they shared a good relationship, describing his father as the "breadwinner" and his mother as the homemaker. The writer noted that Mr. Guthro described his upbringing as

“hard”, quoting him as stating, “Dad didn’t make much money, so things were tight. My mother was strict, and my father drank a lot.” Between 1940 and 1945, three of his older brothers were in military service. He said his brothers would send money home to the family. His three brothers were very young when they went away to war, and it was particularly difficult for the family. With respect to his behaviour while growing up, Mr. Guthro stated, “We sometimes got into trouble. With that many kids, you are bound to get into trouble. When mom hollered, you listened.” Mr. Guthro said his mother had rules and expectations for him and his siblings. They had to help with the household chores and had a curfew. A common method of punishment in the home was "getting the strap", which he said, "wasn’t too hard". Mr. Guthro told the writer his father abused alcohol throughout his upbringing, until his father’s death in 1959. Mr. Guthro denied ever being physically abused, but disclosed to the writer that he was sexually abused by his older siblings throughout his upbringing. Mr. Guthro reported that the abuse ended when he joined the armed forces at 17 years of age. Mr. Guthro stated, “There was a lot of sex in our family. My older brothers and sisters sexually abused the younger ones. My parents were not aware and none of them have ever been charged.” He said he was also sexually abused by his sister-in-law from approximately 11 years of age until 17 years of age. The writer quoted Mr. Guthro as stating:

> One of my older brothers, who sexually abused me growing up, got married and moved out of the family home. He was going away for work and asked that I stay with his wife overnight. Within 10 to 15 minutes of him leaving, his wife had me sitting on the side of her bed. We were talking at first and then within another few minutes, all I had on was my shorts. She started by rubbing my back and touching me. As I grew older, she began having sex with me all the time, until I went away with the army at 17. My brother didn’t know about the abuse. I joined the army to get away from all the sex abuse and I kept it secret from my family.

[24] Mr. Guthro also reported to the writer that he was very close with his mother and siblings while growing up, but said he did not have much of a relationship with his father, because all his father did was drink alcohol and he was not very involved with the family. He stated he had placements at several bases over a three-year period, including St. George, New Brunswick; Picton, Ontario; Debert, Nova Scotia; and Gagetown, New Brunswick. Mr. Guthro told the writer that his job in the army was “firing the big guns.”… That’s why I lost my hearing.” Mr. Guthro also advised that he left the army when he was 20 years of age and moved to Hamilton, Ontario, for employment. He worked at the Dofastco Steel Plant and Douglas Refrigeration. When he was 21 his father passed away while he was residing in Ontario. He moved back to Pictou County, Nova Scotia, shortly after his father’s passing and went to

work at "the pottery", which manufactured steel drainpipes. At 25 years of age, he met his wife, Margaret. They got married and started a family. They were married for 55 years, until she died in 2019.

[25] Mr. Guthro said he shared a positive relationship with his wife and indicated there were no concerns with substance abuse nor domestic violence within the relationship. They had three children: Susan, age 56; Doug, age 53; and Sheri, age 49. He noted he also has six grandchildren. The writer noted that Mr. Guthro opined that he shared positive relationships with his children during their upbringing, stating that, “When they asked to stop, I stopped.” He said they were a close family, who often went on family trips and attended extended family gatherings. He reported that he maintained good relationships with his children during their upbringing and into their adulthood, but his relationship with his children began to break down after they exposed the sexual abuse they endured during their upbringing. The writer also quoted Mr. Guthro as stating, “Up until last year, we had a great family. We did everything together and we would travel. I even looked after their kids at times.” He also said everything began when his son asked him for money:

> My son asked me for $50,000 for his business. I said no because, if I gave it to him, the girls wouldn’t like that and they would want the same. My son was threatening to disclose the abuse if I didn’t give him money. He didn’t get what he wanted, so he called the girls and they went along with him.

[26] Mr. Guthro stated to the writer that since he was charged, he has lost all his family and friends. He said he has one sister left, who resides in Moncton, New Brunswick. He indicated his sister will not speak to him. He also advised that the only support he currently receives is through his CareForce Homecare support for caregivers.

[27] Mr. Guthro reported that he has a grade three education, and he cannot read and write. He stated, “The teachers we had at Temperance Street School were older teachers. My older brothers and sisters that went to school ahead of me had a hard time with the teachers. When I started attending school, the teachers did not like my siblings and would take it out on me. So, I quit and went to work instead. I have earned my own way since I was 11 years old.” With respect to his behaviour in school, Mr. Guthro reported that he had no concerns; however, his teachers judged him based on what his siblings did in the past. He also said that he often "got the strap" for nothing. Mr. Guthro advised that all of his siblings "dropped out of school" at a young age and went on to get work instead. He further stated that, “One of my sisters made it to grade eight. None of us graduated.”

[28] With respect to employment, Mr. Guthro reported that he stopped working and was placed on a disability when he was in his forties. He said he had his first heart attack when he was 37 years of age and another one several years later, and attempted to go back to work. After six months, he was placed on permanent disability by his physician. Mr. Guthro said he was last employed as a cook at the Heather Hotel in Stellarton, Nova Scotia, for approximately eight years before being placed on disability. Prior to that, he was employed as a welder at Trenton Car Works in Trenton, Nova Scotia, and the pottery in New Glasgow, Nova Scotia. He was also employed at Aitkens Flooring before joining the army.

[29] With respect to his financial situation, Mr. Guthro said he receives approximately $3,500 monthly from Old Age Security, Canada Pension Plan and Canadian Armed Forces Pension. He said he has no assets nor debts. His monthly bills include rent ($963); power ($200); cable and phone ($150); and Wilson's Security ($57).

[30] The writer noted that the records of the Justice Enterprise Information Network (JEIN) show no outstanding fines or restitution owing.

[31] As the writer succinctly stated under the heading of “Assessment of Community Alternatives/ Resources” Mr. Guthro “is an 86-year-old individual with no prior record. He is widowed and retired. He currently participates in no community activities. He currently has no contact with any family members, and the only support he receives is through his caregivers, which are provided through CareForce Home Support.”

[32] The writer noted that the victims contacted her in preparation for the PSR and advised that they do not want any future contact with Mr. Guthro, nor do their partners and children.

Medical Evidence

[33] As described by Dr. Hashem Aliter at the sentencing hearing, and in his report, Mr. Guthro is an 86-year-old male (at the time of writing the report) who presents with complex medical and psychiatric comorbidities, including ischemic heart disease, mild CKD, recent NSTEMI, influenza, and frailty. He also recently attempted to commit suicide by crashing a motor vehicle.

[34] Dr. Aliter opines that despite apparent recovery and current outpatient stability, Mr. Guthro’s long-term prognosis remains guarded due to the high

cumulative burden of disease and psychosocial stressors. The combination of advanced cardiovascular pathology, physical decline, and psychiatric vulnerability necessitates a conservative estimate of life expectancy, which Dr. Aliter estimated at 1.5 years to 2.5 years, assuming a stable condition without any major medical events.

[35] With respect to Mr. Guthro's functional status, Dr. Aliter notes in his report that Mr. Guthro resides in a community setting, receiving outpatient follow-up for both medical and psychiatric needs. He maintains reasonable physical function for his age, though he has diminished mobility and endurance. His mood and mental health are stable at present, and he is adherent to medications. Following the suicide attempt, no further self-harm behaviours have been recorded. Dr. Aliter also noted that Mr. Guthro is under psychiatric observation, and mental health interventions have been implemented.

[36] Dr. Aliter noted that Mr. Guthro has no lasting orthopedic or cognitive impairment reported. A psychiatric evaluation was conducted, and Mr. Guthro is currently under monitoring and on medication.

[37] Dr. Aliter also opined that Mr. Guthro can live independently with some assistance in instrumental activities of daily living. There is no cognitive impairment reported.

Analysis

Number of Victims: Overall Moral Blameworthiness

[38] Mr. Guthro committed sexual violence offences against his three children during three separate and distinct periods of time. Therefore, it is appropriate that the sentences on the charges for each victim will be served consecutively [*Friesen*, at para. 155]. Consecutive sentences inform the gravity of the sexual violence of all the offences committed and the overall moral culpability of Mr. Guthro. In doing so, I did not consider the number of child victims as an aggravating factor. Rather, I considered it as informing Mr. Guthro's overall moral blameworthiness in committing sexual violence against his three children for approximately 19 years, which requires the sentence for each victim to be consecutive to the other.

The Impact on Victims: ss. 718.2 (a) (iii.1) and 722

[39] Sections 718.2 (a) (iii.1) and 722 of the *Criminal Code* requires the Court to consider the impact on victims.

[40] Victim impact statements were provided by Mr. Guthro's three children: namely, Susan Farrell, Sheri Colbert, and Fredick Douglas Roberston. Mr. Robertson's spouse, Patrica Roberston and his daughter, Kaitlin Roberston, also provided victim impact statements.

[41] In each statement the far-reaching impact of the pain and suffering caused by Mr. Guthro's misconduct has been thoughtfully articulated by each victim as they describe and explain the physical and emotional impact of Mr. Guthro's behaviour. The impact that the victims have described reflects the commentary of the Supreme Court of Canada in *Friesen,* which provides insight in the forms of harm, including the effects of harm on the child victim such as the shame, embarrassment, unresolved anger, and a reduced ability to trust others. The Court in *Friesen* noted several forms of long-term harm that manifest themselves during a victim's life:

> 81 Sexual violence against children also causes several forms of long-term harm that manifest themselves during the victim's adult years. First, children who are victims of sexual violence may have difficulty forming a loving, caring relationship with another adult as a result of the sexual violence. Second, children may be more prone to engage in sexual violence against children themselves when they reach adulthood ...Third, children are more likely to struggle with substance abuse, mental illness, post-traumatic stress disorder, eating disorders, suicidal ideation, self-harming behaviour, anxiety, depression, sleep disturbances, anger, hostility, and poor self-esteem as adults...

[42] In the PSR the writer established contact with Susan Farrell, the oldest daughter and victim of Mr. Guthro. She reported that the offences have been very stressful, stating, "with the secret of what happened coming out, it has impacted my whole family. I turned their lives upside down. My siblings didn't know about my abuse, and I did not know about theirs. I have lived a life of trying to hold on to this secret. It has not been an easy ride. I was fully prepared to take my secret to the grave."

[43] Mrs. Farrell advised the writer that the offences have always caused stress in her life, not knowing at any moment if the family secret would come out. She went on to explain to the writer that, "my father has a liking to make other people feel uncomfortable. He likes to say things to make you feel uncomfortable, and he manipulates people. He keeps people on their toes so you can never relax. It was always like walking on glass all the time. He enjoys having power over people.

Hiding this secret has been very stressful.” Mrs. Farrell informed the writer that the offences did not only cause emotional stress, but it also physically impacted her. She noted she suffered several concussions and urinary tract infections because of the abuse. Mrs. Farrell said that she decided, at a very young age, that she was going to live a different life, and further stated, “I have done just that. I see it as my own victory and justice. I have been surrounded by people I love, and I have an amazing career. I live a comfortable life.” Mrs. Farrell also told the writer that her journey with therapy started one and a half years ago. She attends counselling every two weeks and will continue to attend counselling for the rest of her life. She added, “I have turned my issues into good by making myself better.” Mrs. Farrell opined that Mr. Guthro would benefit from attending a sexual behaviour treatment program. She opined he does not have the ability to recognize he was at fault, and stated, “He is a narcissist. He can be good at charming when he needs to, but he is not charming.” Mrs. Farrell advised the writer that she would like the "no contact order" to continue after sentencing, noting she would also like the "no contact order" to include her children and husband.

[44] Doug Robertson, son and victim of Mr. Guthro, advised the writer that throughout the 47 years of non-disclosing the offences, he has experienced immense feelings of stress and shame. He said it was very hard to hold it in and not tell anyone all of these years, and that, “My biggest fear was not knowing how disclosing it would impact everyone else.” Mr. Robertson advised the writer that he formally changed his name and now uses his wife’s family name, because his birth name was the same as his father's. He stated, “I run a small business, and I was scared how having the same name would impact that. My kids and wife both changed their last names too. None of us want to be associated with that name.” Since disclosing the offences, Mr. Robertson reports he has suffered from symptoms of depression, noting that some days it has been difficult to get motivated. It has impacted his work and finances. He stated he also took work off to attend every court appearance, further stating, “After each court hearing, I could barely function mentally and emotionally.” Mr. Robertson reports he has been in counselling since coming forward with the abuse he endured, noting he will attend counselling for the rest of his life. Mr. Robertson said his immediate family has also been impacted, including his wife and two children. He stated they will all need to attend counselling, and he indicated that his children are angry. When asked what treatment or programs could benefit Mr. Guthro, he stated, “None, nothing will help him.” Mr. Robertson advised the writer that he does not want any contact Mr. Guthro moving forward and indicated he would like the “no contact" to also include his wife and children.

[45] The writer also contacted Sheri Colbert, Mr. Guthro's youngest daughter and victim, for the purposes of the PSR. Mrs. Colbert advised the writer that the offences have affected every aspect of her life, further stating, "The biggest thing is I have difficulty trusting people. Within my family, friends and neighbours, there is not a lot of trust in the things I grew up with." She also told the writer that she has been suffering from anxiety and panic attacks since she was five years old, and that her panic attacks can sometimes be daily. Mrs. Colbert advised she has been on medications for most of her life to help her function, Mrs. Colber advised the writer that she has been in therapy for over 20 years, which will continue for the rest of her life. Mrs. Colbert told the writer that the offences have also impacted her family, especially her daughter, further stating, "The way I parent can be overwhelming for her. I am hyper focused on everything when it comes to her and can often be a helicopter mom." When asked what treatment or programs she feels Mr. Guthro could benefit from, Mrs. Colbert stated, "At his age, I honestly don't know if it would be worth it. With his defiance, I don't see anything changing. During all of this, he has been dramatic and spiteful. He is doing things to us out of spite. He spray painted family heirlooms or things we wanted that were mom's, so we couldn't have them. He destroyed everything. He has no remorse at all. He blames us, but it started with him."

Specific Factors to Consider in Sexual Offences against Children

[46] In *Friesen*, the Court identified significant factors to provide guidance to determine a fit sentence for sexual offences against children. Noting that their comments are neither a checklist nor an exhaustive set of factors, the Court stressed that their 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 [at paras 121-154]. These significant factors include the following: likelihood to reoffend; abuse of a position of trust or authority; duration and frequency; age of the victim; degree of physical interference; and victim participation.

i. *Likelihood to Reoffend*

[47] Given Mr. Guthro's advanced age and health conditions, it is likely that he is does not present an increased likelihood of reoffending.

ii. *Abuse of a Position of Trust or Authority*

[48] This primary aggravating feature in this case is the egregious beach of trust. Mr. Guthro as the father of his children, was in a position of trust when he repeatedly sexually abused his children from a young age.

[49] As the Supreme Court explained in *Friesen*, the closer the relationship and the higher the degree of trust between the child and the offender, the greater the likelihood the child will suffer more harm from the sexual violence. The abuse of a position of trust increases both the harm to the victim and the gravity of the offence. Mr. Guthro's moral culpability is extremely high, because the breach of duty of protection and care enhances moral blameworthiness [*Friesen*, para. 129]. As noted in *Friesen*, the presence of a trust relationship may inhibit children from reporting sexual violence. The breach of trust may produce "feelings of fear and shame" that further discourage reporting. Threats or emotional manipulation may have a greater inhibiting impact because the victim trusts the offender [*Friesen*, para. 127]. It may inhibit children from reporting abuse, particularly where the perpetrator lives with the victim and is a parent or caregiver. The abuse of a position of trust increases the offender's degree of responsibility and enhances moral blameworthiness. All things being equal, the abuse of a position of trust to commit a sexual offence against a child should result in a lengthier sentence than where an offender is a stranger to the child [*Friesen*, para. 130].

iii. *Duration and Frequency*

[50] The duration and frequency of sexual abuse against each child is a significant aggravating factor, because it increases the harm to the victim. The immediate harm the victim experiences during the sexual abuse is multiplied by the number of assaults. The long-term emotional and psychological harm to the victim can also become more pronounced where the sexual violence is repeated and prolonged as in this case [*Friesen*, para. 131]. As emphasized in *Friesen*, a court should not discount a sentence simply because numerous incidents of sexual violence are covered by a single charge instead of multiple charges [*Friesen*, para. 132]. Sexual violence against children that is committed on multiple occasions and for longer periods of time should attract significant higher sentences that reflect cumulative gravity of the crime [*Friesen*, para. 133]. The offences in this case involved persistent, systematic and prolonged abuse over an extended periods of time for each child. There were numerous incidents of sexual abuse of each child. This is a significant aggravating factor.

iv. *Age of the Victim*

[51] Mr. Guthro groomed each child by attempting to normalize the sexual abuse from a very young age. His conduct was calculated, premeditated and manipulative. The first victim, the oldest daughter, was almost six years old when the abuse began and it ended when she was 13. The second victim, his son, was six or seven years old when the abuse began, and it ended when he was 11 or 12. The youngest child, the second daughter, was between six and ten when the abuse began and it ended when she was 16. The abuse of all three children occurred when they were very young, which is a significant aggravating factor in respect to each child.

[52] As noted in *Friesen*, children who are victimized at a younger age must endure the consequential harm of sexual violence for a longer period of time than persons victimized later in life. In this case, the impact of the offending violence on each victim was clearly articulated in their victims' impact statements. The victim impact statements were informative, as they described the significant and profound impact on each victim, including the emotional and psychological pain they continue to suffer well into adult life. As the Court in *Friesen* recognized, these realities flowing from the age of the victim are relevant to both the gravity of the offence and the degree of responsibility of the offender. Mr. Guthro's moral blameworthiness is enhanced because each victim was particularly young and vulnerable to sexual violence.

v. *Degree of Physical Interference*

[53] The Court in *Friesen,* stressed the importance of courts taking the "modern recognition of the wrongfulness and harmfulness of sexual offences against children" into account when determining the offender's degree of responsibility [*Friesen*, at para. 87]. The Court acknowledged that, given that sexual offences against children can cover a wide spectrum of conduct, the offender's conduct will be less morally blameworthy in some cases than in others.

[54] In *Friesen*, the Court acknowledged that the degree of physical interference is a recognized aggravating factor. This factor reflects the degree of violation to the victim's bodily integrity. It also reflects the sexual nature of the touching and its violation of the victim's sexual integrity [at para. 138]. The degree of physical interference also takes account of how specific types of physical acts may increase the risk of harm. As the Court in *Friesen* observed, penile penetration, particularly when unprotected, can be an aggravating factor because it can create the risk of disease and pregnancy. Penetration, whether penile, or digital may also cause physical pain and physical injuries to the victim, especially children's bodies

because they are vulnerable to physical injuries from penetrative sexual violence [at para. 139].

[55] The Court strongly cautioned courts about the dangers of defining a sentencing range based on penetration or the specific type of sexual activity at issue. In particular, courts must be careful to avoid the following errors:

1. Defining a sentencing range based on a specific type of sexual activity that risks resurrecting at sentencing a distinction that Parliament has abolished in substantive criminal law. Attributing intrinsic significance to the occurrence or non-occurrence of penetrative or other sexual acts based on traditional notions of sexual propriety is inconsistent with Parliament's emphasis on sexual integrity in the reform of the sexual offences scheme.
2. Court should not assume that there is any clear correlation between the type of physical act and the harm to the victim. Judges should think in terms of what is most threatening and damaging to victims. Judges can legitimately consider the greater risks of harm that may flow from specific physical acts such as penetration, but an excessive focus on the physical act can lead to underemphasizing the emotional and psychological harm to the victim that all forms of sexual violence can cause. The modern understanding of sexual offences requires greater emphasis on these forms of psychological and emotional harm, rather than only bodily integrity.
3. Courts must recognize the wrongfulness of sexual violence even in cases where the degree of physical interference is less pronounced. It is acknowledged that increases in the degree of physical interference increase the wrongfulness of the sexual violence. However, sexual violence against children remains inherently wrongful regardless of the degree of physical interference.
4. There is no hierarchy of physical acts for the purposes of determining the degree of Physical interference. Physical acts such as digital penetration and fellatio can be just as serious a violation of the victim's bodily integrity as penile penetration.

[56] In this case, Mr. Guthro's sexual abuse involved significant physical interference with his children's bodily integrity. The sexual abuse of Susan Farrell progressed from sexual touching to cunnilingus, which then progressed to fellatio when she got older. The sexual touching progressed to vaginal intercourse when she was 10 or 11 years old. The act of vaginal intercourse became a regular occurrence in the family home, where Mr. Guthro would enter Susan's bedroom to have vaginal intercourse with her.

[57] The abuse of Richard Douglas Robertson lasted for approximately five or six years, progressing from sexual touching to fellatio by both Mr. Guthro and Richard.

[58] The sexual abuse of Sheri Colbert progressed from sexual touching to fellatio, and to vaginal intercourse. The vaginal intercourse began when she was between six and ten years old and ended when she was 16. It occurred on numerous occasions in the family home.

[59] As described in Exhibit 1, the Agreed Statement of Facts, the offences committed by Mr. Guthro against his three children were egregious acts of violence that had a significant impact on each child. The abuse was highly invasive and painful for each child. For each child, violence and threats of violence were employed to facilitate the abuse. As described in their respective victim impact statements, the sexual violence caused them several forms of long term harm that still manifest themselves during their adult years. The psychological and emotional harm caused by Mr. Guthro's misconduct was palpable during the reading of the victim impact statements in court.

iv. *Victim Participation*

[60] In *Friesen,* the Court provided the following points to assist judges as they give practical effect to Parliament's decision that sentences for sexual offences against children must increase:

(i) There is no implied consent in law. A failure to resist or silence or passivity does not constitute consent [at para. 151].

(ii) A victim's participation should not distract the court from the harm that the victim suffers as a result of sexual violence. Characterizing sexual offences against children that involve a participating victim as free of physical or psychological violence, is simply wrong, and therefore must be strongly discouraged [at para. 152].

(iii) (In cases where a victim's participation is the result of a campaign of grooming by the offender or a breach of an existing relationship of trust, the victim's participation is not considered a mitigating factor [at para. 153].

(iv) A victim's participation should never distract the court from the fact that adults always have a responsibility to refrain from engaging in sexual violence towards children. Adults, not children are responsible for preventing sexual activity between children and adults [at para. 154].

Aggravating and Mitigating Factors

[61] Section 718.2(a) of the *Criminal Code* provides, in part:

> A court that a court that imposes a sentence shall also take into consideration the following principles:
>
> > (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstance relating to the offence or the offender …

[62] In addition to "proportionality", the principle of parity and the correctional imperative of sentence individualization also informs the sentencing process. Consequently, in determining a fit sentence, the sentencing judge should consider any relevant aggravating or mitigating circumstances, as well as objective and subjective factors related to the offender's personal circumstances [*R. v. Pham*, 2013 SCC 15, at para. 8].

Aggravating Factors

[63] The aggravating factors include the following:

- It is a statutorily-mandated aggravating factor that Mr. Guthro in committing the offences, abused a person under the age of 18 (s.718.2(a)(ii.1);
- It is a significant aggravating factor that Mr. Guthro was in a breach of trust (s. 718.2(a)(iii)), which is a statutory aggravating factor. It was because of the relationship of trust between Mr. Guthro and each child that he was in a position - and had the opportunity - to commit the offences. His conduct is at the very high end of the continuum of breach of trust.
- It is a statutory aggravating factor under s. 718.2(a)(iii.1) that the offence had a significant impact on the victim, considering their age and other personal circumstances. The sexual abuse had a significant and profound impact on each child. The abuse was highly invasive and painful for each child. For each child, violence and threats of violence were employed to facilitate the abuse. Threats of violence were employed to conceal the abuse and prevent disclosure as each remained silent to prevent harm to themselves, individually, and to their family.
- Mr. Guthro sexually abused each victim at a very young age. The power imbalance between the victims' and their offender is a recognized aggravating factor.

- Each victim in this case suffered physical and psychological trauma which persists, as evidenced by the content of their respective victim impact statements.
- Each victim endured the predatory actions and conduct of their father's exploitation and manipulation for his personal gratification, in the family home, where they had the right to refuge, safety and protection.
- The nature of and number of incidents of sexual abuse against each victim is aggravating. Mr. Guthro committed numerous acts of sexual abuse on each victim over an extended periods of time.

Mitigating Factors

[64] There are several mitigating factors, including the following:

- Mr. Guthro has pled guilty at the earliest opportunity and in doing so has accepted responsibility for having committed the offences. He apologized to the victims in court and in his pre-sentence report. In R. v. Doucette, 2015 PEICA 5, the court considered the mitigating impact of a guilty plea, and the resulting reduction in sentence. The court observed that there are two schools of thought as to why a guilty plea is a mitigating factor. The first is that a guilty plea is an expression of remorse and acceptance of responsibility. The more pragmatic rationale is that it saves the justice system the time and expense of a trial. The court expressed the view either or both rationales may be used to justify a reduction in sentence.
- With respect to remorse, the Court said in Friesen:

  > [165] ... Remorse is a relevant mitigating factor … However, remorse gains added significance when it is paired with insight and signs that the offender has "come to realize the gravity of the conduct, *and as a result has achieved a change in attitude or imposed some self-discipline which significantly reduces the likelihood of further offending*" (*R. v. Anderson* (1992), 74 C.C.C. (3d) 523 (B.C.C.A.), at p. 536 (emphasis in original))...

- Mr. Guthro apologized to the victims in his PSR, and in court in his allocution.
- Mr. Guthro's guilty pleas prevented the necessity of a trial which saved the resources and time that would have been required had the matter gone to trial. It is a mitigating factor that the victims did not have to

endure a long trial where they would have to testify about the details of the offences.

- Mr. Guthro is a first offender, having never been convicted of a previous offence. He was gainfully employed until he was placed on permanent disability.
- Mr. Guthro is 87 years old with a serious medical condition that must be treated and monitored. In my view, from a practical perspective, Mr. Guthro's advanced age and medical condition does have a mitigating effect in the general application of the purpose and principles of sentencing.
- Mr. Guthro's PSR is positive.
- Mr. Guthro has complied with his release order. There are no alleged breaches.

The Purpose and Principles of Sentencing

[65] The Supreme Court of Canada has enunciated the correct approach to sentencing in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, and Parliament has enacted legislation which specifically sets out the purpose and principles of sentencing. Thus, it is to these sources, and the common law jurisprudence that courts must turn in determining the proper sentence to impose.

[66] Parliament has articulated the fundamental purpose and principles of sentencing in s. 718 of the *Criminal Code*:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;

> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[67] The purpose of sentencing is achieved by blending the various objectives identified in s. 718(a) to (f). The proper blending of those objectives depends upon the nature of the offence and the circumstances of the offender. Thus, the judge is often faced with the difficult challenge of determining which objective or combination of objectives deserves priority. Indeed, s. 718.1 directs that the sentence imposed must fit the offence and offender. Section 718.1 is the codification of the fundamental principle of sentencing, which is proportionality. This principle is deeply rooted in notions of fairness and justice.

[68] Most recently, in *R. v. J.W.* [2025] S.C.J. No. 16, Justice Rowe, writing for the Supreme Court of Canada stated:

> 39 Section 718 sets out the fundamental purpose of sentencing: "... to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society …
>
> 40 This fundamental purpose is to be given effect by "imposing just sanctions" in accordance with the sentencing objectives set out in s. 718(a) to (f): denunciation, general and specific deterrence, separation of offenders (to protect society), rehabilitation, reparation, and the promotion of a sense of responsibility in the offender and acknowledgement of the harm caused to the victim and to the community… one sentencing objective trumps the others. Rather, the sentencing judge is to determine what weight to give to the various objectives; this is to be decided on a case-by-case basis as sentences are to be "individualized"…

Proportionality and Secondary Sentencing Principles

[69] Section 718.1 provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. As stated in *R. v. Parranto*, 2021 SCC 46:

> 10 The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading "Fundamental principle" (s. 718.1). Accordingly, "[a]ll sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (*R. v. Friesen*, 2020 SCC 9, at para. 30).

> The principles of parity and individualization, while important, are secondary principles.

[70] In *J.W.,* the Supreme Court of Canada reaffirmed that a sentence must be "proportionate to the gravity of the offence and the degree of responsibility of the offender". This has been recognized as a "central tenet" of sentencing [para. 41]. The principle of proportionality is “intimately tied” to the fundamental purpose of sentencing and gives “sharper focus” to the “objectives” set out in s. 718 [para. 42].

[71] As Justice Rowe stated, proportionality is the *sine qua non* (an essential condition) of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender [para. 43].

[72] Given that sentencing is highly contextual and necessarily an individualized process, the court must impose a sentence that addresses the two elements of proportionality, that is the circumstances of the offence and the circumstances of the offender, and thereby reach a sentence that fits not only the offence but also the offender. The Court must fashion a disposition from among the limited options available which take both sides of the proportionality inquiry into account.

[73] As stated, the purpose of sentencing is to impose "just sanctions." A "just sanction" is one that is deserved. A fit sentence in that context is one that is commensurate with the gravity of the offence and the moral blameworthiness of the offender. In *R. v. Proulx*, 2000 SCC 5, Chief Justice Lamer reaffirmed that principle:

> 82. Proportionality requires an examination of the specific circumstances of both the offender and the offence so that the punishment fits the crime. Disparity in sentencing for similar offences is a natural consequence of the fact the sentence must fit not only the offence but also the offender.

[74] Parliament sets out a non-exhaustive list of secondary principles in ss. 718.2 to 718. 21 to assist in giving effect to proportionality [*J.W.,* para. 44]. These principles include the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction to consider all available sanctions other than imprisonment that are reasonable in the circumstances.

[75] These secondary principles complement, and are consonant with, the fundamental principle of proportionality. For example, in *Friesen*, the Supreme Court of Canada explained:

> 32 Parity and proportionality do not exist in tension; rather, 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 ...

The Principle of Restraint

[76] In *R. v. Kaiser*, 2025 NSCA 56, Justice Derrick noted that the principle of proportionality requires the sentence to reflect the gravity of the offence, which animates the objective of denunciation. She stressed that the sentence cannot exceed what is just and appropriate when considering the moral blameworthiness of the offender. As Justice Derrick observed, this dimension of the proportionality calculus ensures justice for the offender through a "limiting or restraining function" [at para. 41]. She wrote:

> [43] Sentencing reform in 1996 brought principles of restorative justice into the sentencing mix. The Supreme Court of Canada in *Proulx* recognized the "increased prominence" given by Parliament "to the principle of restraint in the use of prison as a sanction through the enactment of s. 718.2(d) and (e)" of the *Criminal Code*. The Court noted that s. 718.2(d) provides that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and s. 718.2(e) provides that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders…".

[77] Justice Derrick further observed:

> [47] Incarceration as a sanction is subject to the application of the restraint principle, as noted by the British Columbia Court of Appeal in *R. v. Bosco*:
>
> > [35] Sections 718.2(d) and (e) reflect the restraint principle. This principle encourages caution and moderation in the imposition of custodial sentences. Pursuant to the principle of restraint, the sentencing judge should treat imprisonment as a sanction of last resort and limit any custodial period imposed to the lightest term reasonable in the circumstances. The purpose of such restraint is to reduce Canada's historically high incarceration rates and avoid sentences that are unduly harsh: *Proulx* at paras. 16-17.
>
> [48] Restraint is reflected in how the balancing of the gravity of the offence and the moral blameworthiness of the offender to achieve proportionality "converge in a

> sentence that both speaks out against the offence and punishes the offender **no more than is necessary."** [Emphasis in Original].

[78] The Ontario Court of Appeal in *R. v. Priest*, [1996] O.J. No. 3369, expressed the view that proportionality ensures that an individual is not sacrificed "for sake of the common good": at para. 26. I also note the following passage in *R. v. Mathiesen,* 2023 NSSC 314:

> 81. Section 718.2 requires me to consider that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders. This is particularly so, in the case of a first offender…

[79] Mr. Guthro is a first offender. As such, the first offender principle must be considered, which expresses the notion of restraint which underlies the purpose and principles of sentencing. As noted in *R. v. Stein*, [1974] O.J. No. 93, before imposing a custodial sentence upon a first offender the sentencing court should explore the other dispositions which are open to the court unless the offence is of such gravity that no other disposition aside from a period of imprisonment is appropriate [para. 4]. In other words, there are certain very serious offences such as sexual offences against children that require a custodial sentence notwithstanding that the offender has an unblemished past, is of good character, and accepts responsibility for the commission of the offence. In serious offences of child sexual abuse, the sentencing judge is required to emphasize the principles of denunciation and deterrence.

[80] The fundamental purpose of sentencing is set out in s. 718. The objectives of sentencing, also set out in s. 718, are supportive of that purpose. Proportionality, as the fundamental principle of sentencing, serves to give effect to the purpose and objectives of sentencing. The secondary principles set out in ss. 718.2 to 718.12 assist in giving effect to proportionality.

Sentencing Principles for Sexual Offences Against Children

[81] In *Friesen*, the Court clearly, and in very explicit language, stated that sentences for sexual offences against children must increase:

> 5 [We] send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase.

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

[82] The Court reaffirmed that all sentences start with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and that parity and proportionality do not exist in tension; rather, parity is an expression of proportionality [at para. 32]. The Court continued:

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

[83] As stressed in *Friesen*, to effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause: "getting the wrongfulness and harmfulness right is important" [at para. 50]. Protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the *Criminal Code* [at para. 42]. To effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause. A failure to recognize or appreciate the interest that the legislative scheme protects can result in unreasonable underestimates of the gravity of the offences [at para. 50]. It is important to properly understand the harmfulness because it will bring sentencing law into line with society's contemporary understanding of the nature and gravity of sexual violence against children and will ensure that the past biases and myths do not filter into the sentencing process [at para. 50].

[84] As the Court emphasized, it is critical that sentencing reflects the contemporary understanding of sexual violence against children. The Court reaffirmed that there is an innate power imbalance between children and adults that enables adults to violently victimize them [at para. 65]. The Court also recognized

that "because children are a vulnerable population, they are disproportionately the victims of sexual crimes" [at para. 65].

[85] In this case, the Court must impose a sentence that fully reflects and gives effect to the profound wrongfulness and harmfulness of the offences of sexual violence, which are serious offences as reflected in the maximum sentence of 10 years, 14 years, and life imprisonment.

[86] In *Friesen*, the Court emphasized that the sentence imposed must be commensurate with the gravity of sexual offences against children. In doing so, the Court provided some guidance:

> 76. … it is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities... We thus offer some guidance on how courts should give effect to the gravity of sexual offences against children. Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.

[87] The Court noted several forms of long-term harm that manifest themselves during a victim's life:

> 81 Sexual violence against children also causes several forms of long-term harm that manifest themselves during the victim's adult years. First, children who are victims of sexual violence may have difficulty forming a loving, caring relationship with another adult as a result of the sexual violence. Second, children may be more prone to engage in sexual violence against children themselves when they reach adulthood ...Third, children are more likely to struggle with substance abuse, mental illness, post-traumatic stress disorder, eating disorders, suicidal ideation, self-harming behaviour, anxiety, depression, sleep disturbances, anger, hostility, and poor self-esteem as adults...
> 82 We would emphasize that courts should reject the belief that there is no serious harm to children in the absence of additional physical violence ... As we have explained, any manner of physical sexual contact between an adult and a child is inherently violent and has the potential to cause harm. Even in child luring cases where all interactions occur online, the offender's conduct can constitute a form of psychological sexual violence that has the potential to cause serious harm...

[88] Justice Moldaver's (as he then was) comments in *R. v. Woodward*, 2011 ONCA 610, are apposite:

> [76] In so concluding, I wish to emphasize that when trial judges are sentencing adult sexual predators who have exploited innocent children, the focus of the sentencing hearing should be on the harm caused to the child by the offender's conduct and the life-altering consequences that can and often do flow from it. While the effects of a conviction on the offender and the offender's prospects for rehabilitation will always warrant consideration, the objectives of denunciation, deterrence and the need to separate sexual predators from society for society's well-being and the well-being of our children must take precedence.

[89] The Court in *Friesen* stressed the importance of courts taking the "modern recognition of the wrongfulness and harmfulness of sexual offences against children" into account when determining the offender's degree of responsibility [*Friesen*, at para. 87]. The Court acknowledged that, given that sexual offences against children can cover a wide spectrum of conduct, the offender's conduct will be less morally blameworthy in some cases than in others:

> 91…The proportionality principle requires that the punishment imposed be "just and appropriate ... and nothing more" (*M. (C.A.)*, at para. 80... 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...

[90] Since 1987, Parliament has repeatedly increased sentences for sexual offences against children. In *Friesen*, the Court commented on this:

> 95 Parliament has recognized the profound harm that sexual offences against children cause and has determined that sentences for such offences should increase to match Parliament's view of their gravity. Parliament has expressed its will by increasing maximum sentences and by prioritizing denunciation and deterrence in sentencing for sexual offences against children. ...

[91] The Court further acknowledged Parliament's decision to prioritize denunciation and deterrence for offences that involve the abuse of children by the enactment of s. 718. 01 of the *Criminal Code*. Section 718.01 provides:

> 718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[92] As pointed out in *Friesen*, s. 718.01 indicates that Parliament intended to focus the attention of sentencing judges on the relative importance of the objectives of denunciation and deterrence involving the abuse of children. As Saunders J.A. recognized in *R. v. D.R.W.*, 2012 BCCA 454, Parliament thus attempted to "re-set the approach to the criminal justice system to offences against children" by enacting s. 718.01[as quoted in *Friesen*, at para. 102].

[93] Importantly, in *Friesen* the Court emphasized that by the enactment of s. 718.01, "the sentencing judge's discretion is thereby limited, such that it no longer open to the judge to elevate other sentencing objectives to an equal or higher priority" [at para. 104]. This simply means that paramount consideration must be given to denunciation and deterrence. Notwithstanding that, the sentencing judge does retain the discretion to consider other factors such as rehabilitation and *Gladue* factors, in arriving at a fit sentence, in accordance with the overall principle of proportionality [at para. 104]. As the Court stated, “Parliament’s choice to prioritize denunciation and deterrence for sexual offences against children is a reasoned response to the wrongfulness of these offences and the serious harm they cause [at para. 105].

[94] The Court in *Friesen* also clearly stated that sentences for sexual offences against children must be increased to correspond to legislative initiatives

> 107 We are determined to ensure that sentences for sexual offences against children correspond to Parliament's legislative initiatives and the contemporary understanding of the profound harm that sexual violence against children causes. To do so, we wish to provide guidance to courts on three specific points:
>
> (1) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
>
> (2) Sexual offences against children should generally be punished more severely than sexual offences against adults; and,
>
> (3) Sexual interference with a child should not be treated as less serious than sexual assault of a child.

[95] The Court explained that there are two primary reasons why courts should depart from prior precedents and sentencing ranges to impose a proportionate sentence. First, sentences should increase because of the legislative initiative, such as enactment of s. 718.01 of the *Criminal Code*. The Supreme Court endorsed the reasoning in *R. v. Regnier*, 2018 QCCA 306, wherein the Quebec Court of Appeal reasoned that courts must give "the legislative intent its full effect" and should not feel bound to adhere to a range that no longer reflects Parliament's view of the gravity of the offence. The second reason why upward departure from the precedents may be required is that courts' "understanding of the gravity and harmfulness of sexual offences against children has deepened"[*Friesen*, at para.110]. The Court cautioned against unquestioning reliance on earlier precedent:

> 110 Courts should accordingly 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" (*R. v. Vautour*, 2016 BCCA 497 [at para. 52]. Even more recent precedents may be treated with caution if they simply follow more dated precedents that inadequately recognize the gravity of sexual violence against children... Courts are thus justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences...

[96] In concluding that Parliament has determined that sexual violence against children should be punished more severely, the Supreme Court in *Friesen* noted that four legislative signals reflect Parliament's recognition of the inherent vulnerability of children and the wrongfulness of exploiting that vulnerability. First, Parliament has prioritized deterrence and denunciation for offences that involve the abuse of children by enacting s. 718.01. Second, Parliament has identified the abuse of persons under the age of 18 as a statutory aggravating factor pursuant to s. 718.2(a)(ii.1). Third, Parliament has identified the abuse of a position of trust or authority as an aggravating factor pursuant to s. 718.2(a)(iii). 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.

Positions of the Parties

The Crown Position

[97] The Crown starts from the proposition that a global sentence in the range of 17 to 22 years would be a fit and proper punishment for the offences and the offender. However, after considering the totality principle, the Crown recommends an actual sentence going forward in the range of 9 to 12 years. The Crown says that

a sentence in that range would strike a just proportion between the gravity of the offences and the circumstances surrounding the offender, Mr. Guthro.

[98] In support of its submission, the Crown relies on *Friesen,* as well as *R. v. Hughes*, 2020 NSSC 376; *R. v. W.G.L.,* 2020 NSSC 323; *R. v. S.J.M.,* 2021 NSSC 235; *R. v. B.J.R.,* 2021 NSSC 26; *R. v. A.S.,* 2025 ONSC 398; *R. v. K.W.*, 2024 ONSC 6102; *R. v. R.D.,* 2024 ONSC 6549; and, *R. v. S.M.D.A.,* 2025 BCPC 19.

The Defence Position

[99] The defence submits that because of Mr. Guthro's advanced age, coupled with his medical condition, and a short life expectancy, a term of imprisonment of two years, to be served in the community under a conditional sentence order, followed by a three-year probationary term is a fit and proper punishment.

[100] In support of its position, the defence acknowledges the Supreme Court of Canada's recent pronouncement in *Friesen,* and relies on the following authorities in support of its position: *R. v. Borden*, 2025 NSSC 32; *R. v. P.S.,* 2021 ONSC 5091; *R. v. Dejaeger,* 2015 NUCJ 02; *R. v. Laing*, 2022 NSCA 23; *R. v. M.M.,* 2022 ONCA 441; *R. v. D.S.,* 2025 ONCJ 56; *R. v. Sarraf,* 2017 ONSC 7668; Helen Love, *Canadian Sentence Practices in Relation to Older Adults* (LLM Candidate, UBC Faculty of Law); *R. v. M.M.*, 2014 MBPC 23; *R. v. Maliki,* 2005 BCCA 495; and *R. v. Adams*, 2010 NSCA 42.

[101] The defence acknowledges that the range of sentences provided by the Crown are in line with the directions in *Friesen*. However, the defence emphasizes that there are exceptional circumstances surrounding Mr. Guthro, who is 87 years old, whose health is deteriorating, and whose life expectancy could be less than the duration of a custodial sentence imposed by the Court. The defence submits that that Mr. Guthro cannot function "without very significant assistance and he cannot perform the very basic tasks by himself." Additionally, the defence says his medical conditions cannot not be managed within a correctional facility.

[102] The majority of Supreme Court of Canada has stated that sentencing is "one of the most delicate stages of the criminal justice process in Canada (*R. v. Lacasse*, 2015 SCC 64, para. 1). More of an art than a science, sentencing requires judges to consider and balance a multiplicity of factors.

[103] While the sentencing process is governed by the clearly defined objectives and principles in Part 23 of the *Criminal Code*, it remains a discretionary exercise

for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing.

[104] As succinctly expressed in R. v. *Parranto*, 2021 SCC 46, the goal in every case is to impose a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading "Fundamental principle " (s. 718.1). In *Friesen*, the Supreme Court of Canada stated:

> 30 All sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender

[105] The principles of parity and individualization, while important, are secondary principles. The Court explained that despite what would appear to be an inherent tension among these sentencing principles, *parity* and *proportionality* are not at odds with each other. To impose the same sentence on unlike cases furthers neither principle, while consistent application of proportionality will result in parity. This is because parity, as an expression of proportionality, will assist courts in fixing on a proportionate sentence. Courts cannot arrive at a proportionate sentence based solely on first principles but rather must "calibrate the demands of proportionality by reference to the sentences imposed in other cases" (at para. 33).

[106] As to the relationship of individualization to proportionality and parity, the majority of the Supreme Court in *Lacasse* aptly observed, at para. 53:

> Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances.

[107] The majority stressed that 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" (at para. 58). 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.

The Appropriate Range of Sentence for the Offences and Offender

[108] In determining a fit and proper punishment, the starting point is to consider the appropriate range of sentence. Sentencing ranges are intended to encourage greater consistency between sentences and respect for the principle of parity. However, "they are guidelines rather than hard and fast rules" [*R. v. Nasogaluak*, 2010 SCC 6, at para. 44]. As recognized by Justice Farrar in *R. v. Phinn*, 2015 NSCA 27, where he referenced *R. v. A.N.*, 2011 NSCA 21:

> [34] Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: [Authorities omitted]. The range moves sympathetically with the circumstances, and is proportionate to the *Code*'s sentencing principles that include fundamentally the offence's gravity and the offender's culpability.

[109] As explained in *Parranto:*

> 17 Sentencing ranges generally represent a summary of the case law that reflects the minimum and maximum sentences imposed by courts. They "provide structure and guidance and can prevent disparity", while leaving judges space to "weigh mitigating and aggravating factors and arrive at proportional sentences" The range, therefore, "reflects individual cases, but does not govern them" (C. C. Ruby, *Sentencing* (10th ed. 2020), at s. 23.7, citing *R. v. Brennan and Jensen* (19750, 11 N.S.R. (2d)84 (C.A.)).

[110] In *Friesen*, the court reaffirmed that due to the need for individualized sentencing, ranges are guidelines only:

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

> Similarly, a particular combination of aggravating and mitigating factors may call for a sentence that lies far from any starting point and outside any range...

[111] Though the Supreme Court in *Friesen* acknowledged that it was not its role to establish a sentencing range for sexual offences against children, it did comment on the potential length of such sentences. As stated above, the Court observed 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 para. 114. Further, it noted that substantial sentences could result even in cases "where there was only a single instance of sexual violence and/or a single victim"[at para. 114].

The Parity Principle: s. 718.2(b)

[112] As a corollary to sentence individualization, the parity principle requires that a sentence be similar to those imposed in similar offenders for similar offences committed in similar circumstances [s. 718.2(b)]. The parity principle means that any disparity between sanctions for different offenders requires justification [*R. v. Ipeelee,* [2012] 1 S.C.R. 433, at para. 79].

[113] The parity principle requires me to look at sentencing ranges for each offence. In doing that, I am mindful that each sentence must reflect the unique circumstances of that offence and that offender [*R. v. Lacasse*, 2015 SCC 64]. As Justice Wagner (as he then was) stated in *Lacasse*:

> 58 There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are … difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:
>
> > A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred. (*Nasogaluak*, at para. 44)

[114] It is trite to say that no two cases are alike because it is extremely difficult to find a case that is strikingly similar in respect to the circumstances the offence and/or offender. As Chief Justice Lamer said in *R. v. C.A.M.,* [1996] 1 S.C.R. 500:

> 92. … Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction.

[115] As explained in *Friesen* parity and proportionality do not exist in tension; rather, 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 para.32]. The Court continued:

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

[116] Mindful of this observation, the following sample of pre- and post-*Friesen* sentencing decisions in Nova Scotia involving children sexually abused by their parent, or by someone acting in *loco parentis* in a position of trust demonstrate that a significant penitentiary term is the norm.

Pre-Freisen Cases

[117] The following illustrate the broad range of sentences in Nova Scotia sentencing decisions pre-*Freisen: R. v. P.V.K.* (1992), 116 N.S.R. (2d) 110 (five years); *R. v. L.R.S.* (1993), 121 N.S. R. (2d) 248 (C.A.) (eight years); *R. v. G.O.H.,* [1995] N.S.J. No. 316 (9.5 years); and *R. v. A.N*., 2011 NSCA 21 (eight years).

Post-Friesen

[118] It appears that a mid-single penitentiary to a double-digit term for sexual offences against children involving a parent, or by someone acting in *loco parentis* in a position of trust are the norm in Nova Scotia: See *R. v. D.R.,* 2020 NSPC 46 (3.5 years); *R. v. W.G.L*., 2020 NSSC 323 (3.5 years); *R. v, SJM,* 2021 NSSC 323 (nine years); *R. v. S.P.W,* 2021 NSPC 24 (4.5 years); *R. v. B.J.R.,*2021 NSSC 26

(three years); *R. v. C.A.L.,* 2021 NSSC 365 (3.5 years); *R. v. APL*, 2021 NSSC 238 (six years); *R. v. S.F.W.,* 2021 NSSC 312 (six years); *R. v. AMB,* 2022 NSSC 212 (seven years); *R. v. C.S.Y.,* 2022 NSSC 122 (five years); *R. v. J.B.,* 2023 NSSC 427*; R. v. C.S*., 2023 NSPC 34 (seven years); *R. v. DCS*, 2023 NSSC 242 (six years); *R. v. Snow*, 2023 Unreported NSPC (22 years); *R. v. C.B*., 2023 NSPC 29 (six years); *R. v. J.D.C*., 2024 NSSC 47 (seven years); *R. v. G.C.,* 2025 Unreported NSPC (13 years).

[119] The sentence range in Nova Scotia involving parents or by someone acting in *loco parentis* who commit sexual offences against children is from three to 22 years of imprisonment.

[120] Similarly, in Ontario post-*Friesen* sentencing decisions involving parents or by someone acting in *locus parentis*, who commit sexual offences against children is between 5 and 22 years of imprisonment: see *R. v. G.R.*, 2020 ONSC 7411 (5.5 years); *R. v. Milani*, 157 O.R. (3d) 314 (20 years); *R. v. C.B.*, 2021 ONSC 187 (five years); *R. v. K.Y.*, 2021 ONCJ 26 (six years); *R. v. L.R.,* 2021 ONCJ 502 (22 years); *R. v. M.A.*, 2022 ONSC 1496 (seven years); *R. v. A.K.*, 2022 ONCA 508 (eight years); *R. v. R.S.,* 2022 ONSC 4604 (11 years); *R. v. R.V.*, 2022 ONSC 2332 (eight years); *R. v. R.G.*, 2022 ONCJ 204 (ten years); *R. v. L.R.*, 2023 ONSC 6762 (five years); *R. v. LR,* 2023 ONCA 486 (22 years); *R. v. A.S.*, 2023 ONSC 983 (seven years); *R. v. Hilal*, 2023 ONSC 4270 (eight years); *R. v. J.B.*, 2023 ONSC 1275 (nine years); (*R. v. G.B.*, 2024 ONCA 757 (nine years); and, *R. v. RL*, 2025 ONSC 2317 (eight years).

Other Jurisdictions

[121] It appears that in other jurisdictions, such as, in Manitoba, Alberta, British Columbia, and New Brunswick, Post-*Friesen* sentencing decisions involving parents or someone acting in *loco parentis* who commit sexual offences against children usually receive a significant penitentiary sentence: See *R. v. R.D.S.,* 2021 MBQB 264 (20 years); *R. v. Berndt,* 2022 ABQB 418 (14 years); *R. v. D.H*., 2022 MBPC 36 (23 years); *R. v. ABCJ,* 2023 ABCJ 164 (nine years); *R. v. T.A.P.,* 2023 BCSC 316 (18 years); *R. v. R.V.*, 2025 NBKB 87 (14 years), and *R v AA,* 2023 NBPC 14 (12 years)

Mr. Guthro's Overall Culpability

[122] In terms of parity, Mr. Guthro's moral blameworthiness is high given that he abused his three children for a period of approximately 19 years. The position of trust was significant given the familial relationship. The nature of and the frequency of the sexual abuse was extensive, and the impact on each child was substantial.

Strikingly Similar Case

[123] *R. v. A.B.R*, 2019 BCSC 1568, is strikingly similar to the case at bar. In *A.B.R*., the offender committed two counts of sexual intercourse and two counts of indecent assault, all involving his two biological daughters. The historical offences dated back to the late 1960s and extended into the late 1970s. With respect to three of the offences, there were "over 100 incidents" of prohibited conduct. In delivering the oral judgment for the Supreme Court of British Columbia, Justice Silverman acknowledged the difficulty in considering the advanced age of the offender, almost 87 years old, with onset dementia in circumstances where the offences involved serious egregious sexual offences against his two biological daughters for an extended period. Justice Silverman noted that had the offender been 60 years old, a just and appropriate sentence would be in the range of 15 to 20 years' imprisonment, but because of his age and health, the global sentence of ten years' imprisonment was imposed.

The Appropriateness of a Conditional Sentence

[124] As stated, the defence are seeking a conditional sentence order. That is available for consideration because of the recent amendment to s. 742.1 of the *Criminal Code.* As Justice Farrar observed in *R.B.W.,* 2023 NSCA 58:

> 154. Clause 14 of Bill C-5 has changed the text of s. 742.1 of the *Criminal Code* to remove the prohibition against imposing a conditional sentence in this case.
>
> 155. Section 11(i) of the *Charter* provides:
>
> 11. Any person charged with an offence has the right: [...]
> i. if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

[125] Section 742.1 of the *Criminal Code* now reads, in part, as follows:

> 742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the

> offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if
>
> (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
>
> (b) the offence is not an offence punishable by a minimum term of imprisonment …

[126] The issue is whether Mr. Guthro is entitled to the benefit of a Conditional Sentence Order (CSO) based on the circumstances surrounding the offences and his personal circumstances. To address that issue, a consideration of s. 742.1 is necessary.

[127] As Farrar J.A. noted in *R.B.W.*, Chief Justice Lamer in *R. v. Proulx*, 2000 SCC 5, outlined the analytical framework a court should follow when deciding whether to impose a CSO. First, the judge must exclude two possibilities, namely probationary measures and a penitentiary term:

> 58. A similar approach should be used by Canadian courts. Hence, a purposive interpretation of s. 742.1(*a*) does not dictate a rigid two-step approach in which the judge would first have to impose a term of imprisonment of a fixed duration and then decide if that fixed term of imprisonment can be served in the community. In my view, the requirement that the court must impose a sentence of imprisonment of less than two years can be fulfilled by a preliminary determination of the appropriate range of available sentences. Thus, the approach I suggest still requires the judge to proceed in two stages. However, the judge need not impose a term of imprisonment of a <u>fixed</u> duration at the first stage of the analysis. Rather, at this stage, the judge simply has to exclude two possibilities: (a) probationary measures; and (b) a penitentiary term. If either of these sentences is appropriate, then a conditional sentence should not be imposed.
>
> 59. In making this preliminary determination, the judge need only consider the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 to the extent necessary to narrow the range of sentence for the offender. The submissions of the parties, although not binding, may prove helpful in this regard. For example, both parties may agree that the appropriate range of sentence is a term of imprisonment of less than two years.
>
> [Emphasis in original.]

[128] In this case, I am unable to exclude a penitentiary sentence because of the seriousness of the offences which Mr. Guthro committed against his three young children over a significant period of time. There are significant aggravating factors that far outweigh the mitigating factors. Notwithstanding Mr. Guthro's advanced age, his serious medical health conditions, and life expectancy, a federal penitentiary sentence is warranted here because of the extremely aggravating factor that he was in a breach of trust. It was because of the relationship of trust between Mr. Guthro and each child that he was in a position - and had the opportunity - to commit the offences. His conduct is at the very extreme end of the continuum of breach of trust. Thus, objectives such as denunciation and deterrence are particularly pressing and consequently a significant federal penitentiary sentence is necessary. Indeed, the need for denunciation is so pressing here that incarceration is the only suitable way to express society's condemnation of Mr. Guthro's conduct [see *Proulx*, at para. 106]. To borrow the phrase of the Ontario Court of Appeal, "[a] conditional sentence would ignore entirely the proportionality of principle and denigrate the seriousness of the offence" [*R. v. Premji*, 2021 ONCA 721, at para. 9].

[129] It should be stressed that in cases such as this one, where the degree of the offender's overall moral blameworthiness is extremely high, imposition of a CSO would be extraordinary and that a penitentiary sentence is necessary to deter other like-minded parents and to denounce this abhorrent behaviour.

Just and Appropriate Sentence

[130] As stated, the central issue in this sentencing hearing is the determination of a fit and proper punishment for these offences and this offender, mindful that the sentencing process is highly contextual and a necessarily individualized process.

> *The offences against* ***Susan Farrell****: Counts 1 and 4*
>
> **Count 1:** between January 1, 1971, and December 31, 1981, did have sexual intercourse Susan Farrell, a female person not his wife, without her consent, contrary to s. 144 of the *Criminal Code*, and
> **Count 4:** between January 1, 1971, and December 31, 1981, did have sexual intercourse with Susan Farrell, while knowing Susan Farrell was his daughter, contrary to s. 150 of the *Criminal Code.*

[131] As stated, s. 144 imposes a maximum sentence of life imprisonment, and s. 150 imposes a maximum of sentence of 14 years. The imposition of seven years is a just and appropriate sentence for each offence against Susan Farrell. Susan Farrell

was almost six years old when the abuse began and it ended when she was 13 years of age. For approximately seven years Susan Farrell endured the sexual abuse by her father. Count 4 is concurrent to Count 1.

*The offences against **Sheri Colbert**: Counts 5,8,9, and 12*

> **Count 5:** between January 1, 1979, and December 31, 1984, did have sexual intercourse Sheri Colbert, a female person not his wife, without her consent, contrary to s. 144 of the *Criminal Code*, and
> **Count 8:** between January 1, 1979, and December 31, 1984, did have sexual intercourse with Sheri Colbert, while knowing Sheri Colbert was his daughter, contrary to s. 150 of the *Criminal Code*;
> **Count 9:** between January 1, 1985, and December 31, 1990**,** did for a sexual purpose touch, Sheri Colbert, a person under the age of 14 years directly with parts of his body, to wit: his hands, his penis, and his lips, contrary to s 151 of the *Criminal Code*;
> **Count 12:** between January 1, 1985, and December 31, 1990, did have sexual intercourse with Sheri Colbert, while knowing that Sheri Colbert was his daughter, contrary to s. 155 of the *Criminal Code*;

[132] As stated, Count 5 imposes a maximum sentence of life imprisonment. Count 8 imposes a maximum sentence of 14 years. Count 9 imposes a maximum sentence of 10 years. Count 12 imposes a maximum sentence of 14 years.

[133] **Count 5:** Six years is a just and appropriate sentence for Count 5.

[134] **Count 8:** Seven years is a just and appropriate sentence for Count 8, to run concurrently to Count 5.

[135] **Count 9:** Seven years is a just and appropriate sentence for Count 9, to run concurrently to Count 5 and Count 8.

[136] **Count 12:** Seven years is a just and appropriate sentence for Count 12, to run concurrently to Counts 5, 8, and 9. The sentence of seven years for Count 12 strikes a just balance between the circumstances surrounding the offences and offender. Sheri Colbert was between six and ten when the abuse began and it ended when she was 16 years old. For years she endured the sexual abuse inflicted on her by her father.

[137] It should be noted that on January 4, 1983, s. 144 was repealed. Therefore, the time frame applicable to Count 5 is between January 1, 1979 and January 4, 1983. Consequently, I did not consider any facts as described in Exhibit 1, the Agreed Statement of Facts, beyond January 3, 1983. See S.C. 1980-81-82, c. 125.

*The offences against **Fredrick Douglas Robertson**: Counts 14, and 16*

> **Count 14:** between January 1, 1977, and December 31, 1983, did indecently assault Frederick Douglas Robertson, a person, contrary to s. 156 of the *Criminal Code*, and
> **Count 16:** between January 1, 1980, and December 31, 1983, did commit a sexual assault on Frederick Douglas Robertson, contrary to s. 246.1 of the *Criminal Code.*

[138] As stated, Counts 14 and 16 each impose a maximum sentence of ten years. Six years is a just and appropriate sentence for each offence because it strikes a just balance between the circumstances surrounding the offences and offender. Fredrick Douglas Robertson was six or seven years old when the abuse began and it ended when he was 11 or 12 years old. For five or six years Frederick Douglas Robertson endured the sexual abuse inflicted on him by his father. Count 16 is concurrent to Count 14.

The Mitigating Effect of Early Guilty Pleas

[139] It should be emphasized that the sentences set out above reflect the mitigating effect of early guilty pleas. Mr. Guthro has pled guilty at the earliest opportunity and in doing so has accepted responsibility for committing the offences. He apologized to the victims in court and in his pre-sentence report. In *R. v. Doucette,* 2015 PEICA 5, the court considered the mitigating impact of a guilty plea, and the resulting reduction in sentence. The court observed that there are two schools of thought as to why a guilty plea is a mitigating factor. The first is that a guilty plea is an expression of remorse and acceptance of responsibility. The more pragmatic rationale is that it saves the justice system the time and expense of a trial. Either or both rationales may be used to justify a reduction in sentence.

[140] Mr. Guthro's guilty pleas avoided the necessity of a trial, saving the resources and time and ensuring that the that victims did not have to endure a long trial where they would have to testify about the details of the offences.

Concurrent or Consecutive Sentences: s. 718.3 (7) (b)

[141] In addressing whether the sentences for the offences for which Mr. Guthro pleaded guilty should be concurrent or consecutive, I have considered s. 718.3 (7)(b) of the *Criminal Code*, and the instructive comments of the Nova Scotia Court of Appeal repeatedly cautioning against a "slavish, mathematical and formulaic approach to sentencing for multiple offences" (*R. v. Skinner*, 2016 NSCA 54, at para.

42. As noted in *R. v. Campbell,* 2022 NSCA 29, offences committed against multiple victims should be served consecutively.

[142] In *R. v. Naugle*, 2011 NSCA 33, Justice Beveridge noted that where multiple offences arise out of the same transaction, the Court must ensure that the selection of consecutive, as opposed to concurrent sentences, does not give rise to a sentence out of proportion to the overall gravity of the conduct, or otherwise create a sentence that is unduly long or harsh (para. 24). Justice Beveridge's observations are apposite:

> 21. There are no specific provisions in the *Criminal Code* to guide a sentencing judge on when to select a consecutive as opposed to a concurrent sentence. The *Code* does direct that a Court that imposes a sentence shall take into consideration a number of principles, one of which is that of totality. Section 718.2 provides:
>
> > a. where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> 22. The discretion to order consecutive or a concurrent sentence is also afforded deference. Sopinka J., for the majority in *R. v. McDonnell,* [1997] 1 S.C.R. 948.
> …
> 23 In *R. v. Adams*, 2010 NSCA 42 this Court reiterated the appropriate relationship between the selection of concurrent or consecutive sentences and the principle of totality. Bateman J.A., in her unanimous reasons for judgment, explained:
>
> > [23] In sentencing multiple offences, this Court has, almost without exception, endorsed an approach to the totality principle consistent with the methodology set out in *C.A.M.*, *supra*… The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced. …

[143] As Chief Justice MacKeigan stated in *R. v. Hatch* (1979), 31 N.S.R. (2d) 110:

> [6] We have frequently noted that the *Code* seems to require consecutive sentences unless there is a reasonably close nexus between the offences in time and place as part of one continuing criminal operation or transaction: [citation omitted]. This does not mean, however, that we should slavishly impose consecutive sentences merely because offences are, for example, committed on different days. It seems to me that we must use common sense ...
> [7] The choice of consecutive versus concurrent sentences does not matter very much in practice so long as the total sentence is appropriate. Use of the consecutive technique, when in doubt as to the closeness of the nexus, ensures in many cases that the total sentence is more likely to be fit than if concurrent sentences alone are

> used. Conversely, unthinking use of concurrent sentences may obscure the cumulative seriousness of multiple offences.

[144] In this case, Mr. Guthro committed multiple sexual offences against each of his three children during different time periods, as described in the multi-count indictment. Therefore, the sentences involving each victim should be consecutive to each other. However, the multiple offences relating to each victim should be concurrent because of the time frames within which the offences occurred and their similarity.

Totality Principle

[145] The totality principle ensures that the aggregate of consecutive sentences does not exceed the overall culpability of the offender. It is a means of maintaining the principle of proportionality [see *R. v. C.A.M.*, [1996] 1 S.C.R. 500, at para. 42]. Parliament explicitly limited the application of the totality principle to cases where consecutive sentences were ordered [section 718.2 of the *Criminal Code*; *R. v. Skinner*, 2016 NSCA 54. In *M(CA)*, Chief Justice Lamer explained the rationale underlying the totality principle:

> 42 In the context of consecutive sentences, this general principle of proportionality expresses itself through the more particular form of the "totality principle". The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. As D. A. Thomas describes the principle in *Principles of Sentencing* (2nd ed. 1979), at p. 56:
>
> > The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate sentence is "just and appropriate".
>
> Clayton Ruby articulates the principle in the following terms in his treatise, *Sentencing*, *supra*, at pp. 44-45:
>
> > The purpose is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate "just and appropriate". A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of a sentence for the most serious of the individual offences involved, or if its effect is

> to impose on the offender "a crushing sentence" not in keeping with his record and prospects.

[146] In *R. v. Johnston*, 2012 ONCA 339, Justice Blair explained the totality principle in these terms:

> 15 A foundational principle of the Canadian sentencing regime is the principle of proportionality: "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender:" *Criminal Code*, s. 718.1. This principle is based upon the fundamental notion that the punishment must fit the crime and that the degree of punishment must reflect the gravity of the offence and the moral blameworthiness of the offender. Otherwise, society will have no confidence in the law or the fairness and rationality of the legal system: see *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at p. 533.
> 16 An important component of the principle of proportionality is the principle of totality, which is embedded in s. 718.2(c) of the *Criminal Code*:
>
> > A court that imposes a sentence shall also take into consideration the following principles:
> > a where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
> > …
>
> 18 In short, a combined sentence must not be unduly long or harsh in the sense that its impact simply exceeds the gravity of the offences in question or the overall culpability of the offender. The overall length of the custodial period imposed must still relate to and reflect the variety of sentencing goals, including denunciation, deterrence (specific and general), rehabilitation, the need to separate offenders from society where necessary, and the general imperative of promoting respect for the law and the maintenance of a just, peaceful and safe society: *Criminal Code*, s. 718. In this regard, the authorities recognize that where the ultimate effect of the combined sentences is to deprive the offender of any hope of release or rehabilitation, the functional value of these sentencing principles meets the point of diminishing returns: see *R. v. C. (J.A.)* (1995), 26 O.R. (3d) 462 (C.A.). This point was reinforced by Lamer C.J. in *M. (C.A.)*, at para. 74.

[147] Justice Blair explained that the principle of totality in the context of consecutive sentences may arise where the judge must deal with a series of offences, some of which require the imposition of consecutive sentences having regard to the criteria for such sentences [at para. 19].

The Application of the Totality Principle

[148] In this case, Mr. Guthro is being sentenced for eight offences. Some of these offences are separate and distinct offences committed against three different victims, while some arise out of the same conduct involving the same victim. As such, I must

consider the interaction between ss. 718.2 (c) and 718.3(4) of the *Criminal Code* – whether to impose consecutive sentences and how to consider totality.

[149] In *R. v. Adams*, 2010 NSCA 42, the Nova Scotia Court of Appeal directed that when sentencing for multiple offences, a judge should fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced [at para. 23].

Global Sentence or Aggregate Sentence

[150] In this case, the total sentence in relation to Susan Farrell, Counts 1 and 4, is seven years. The total sentence in relation to Sheri Colbert, Counts 5, 8, 9, and 12, is seven years, consecutive to Counts 1 and 4. The total sentence in relation to Frederick Douglas Robertson, Counts 14 and 16, is six years, consecutive to Counts 1, 4, 5, 8, 9, and 12. That results in an aggregate or global sentence of 20 years.

[151] As stated above, sexual violence against children that is committed on multiple occasions, against multiple victims, and for extended periods of time should attract significantly higher sentences that reflect the cumulative gravity of the crime [*Friesen*, para. 133]. In my view, 20 years reflects the cumulative gravity of the crimes Mr. Guthro committed.

[152] Having determined that the fit and proper sentences for the offences against each victim should be consecutive to each other, I must now take a final look at the aggregate sentence of 20 years, and determine whether that global sentence exceeds what would be a just and appropriate sentence for the offences and offender. I must consider whether the consecutive sentences resulting in a combined sentence of 20 years is "unduly long or harsh" given that Mr. Guthro is 87 years old with health problems and a life expectancy of around 1.5 to 2.5 years. In short, I conclude that 20 years is unduly "long or harsh". Let me explain.

[153] The Crown acknowledged in its submissions that a sentence of 17 to 22 years would be unduly long and harsh. I agree, particularly considering Mr. Guthro's advanced age, health issues, and life expectancy. Undoubtedly, custody will be harder on Mr. Guthro than on most. A measure of restraint is necessary. However, while Mr. Guthro's advanced age, and medical condition is a factor to be considered, it cannot justify a sentence that is disproportionate to the gravity of the offences and his moral blameworthiness.

[154] The Crown submits that the appropriate range of sentence for all the offences for which convictions have been entered is 9 to 12 years. In my view, that is a fair and appropriate range of sentence for these offences and offender, as it recognizes the fact that Mr. Guthro is 87 years old, with serious health issues, and a short life expectancy.

Mr. Guthro's Health

[155] The status of the offender's health may be a relevant consideration on sentencing, but there must be evidence that the offender's medical conditions cannot be properly treated while being incarcerated. In the instant case, there is no evidence proffered at the sentencing hearing to demonstrate that Mr. Guthro's medical conditions cannot be properly treated while he is incarcerated. In fact, correspondence from both the provincial and federal correctional authorities suggests otherwise. For example, the following excerpt is taken from a letter dated July 25, 2025, received and submitted to Mr. Boubnov, defence counsel, by the Correctional Service of Canada:

> The provision of professional clinically independent, culturally responsive, integrated and coordinated person-centred care is a priority for CSC. It is underscored by CSC's legislative mandate to provide essential health care and reasonable access to non-essential health care to federally incarcerated individuals, including those with complex needs, in keeping with professionally accepted standards. Further, CSC understands the importance of continuity of care and access to appropriate support for individuals with significant physical limitations and remains committed to ensuring that individuals, once in our custody, receive appropriate clinical assessments, health care services, and accommodations tailored to their specific needs, including assistance with daily living activities where required.

Mr. Guthro's Age, Health and Life Expectancy

[156] Mr. Guthro's advanced age, health situation, and life expectancy raise difficult and complicated issues. There is a plethora of cases where the advanced age of the offender has been considered a mitigating factor in reducing the sentence, particularly in cases where the advanced age is combined with a serious debilitating medical condition. For example, in *R. v. A.R.,* [1994] M.J. No. 89, the Manitoba Court of appeal recognized that advanced age is usually a mitigating feature. The Court stated that there are two reasons for this. The older a person is, the harder it is

to serve a prison term and the less is that person's life expectancy after prison [at para. 35]. The Court further commented:

> 36. As a general rule, however, advanced age does not entitle a person who has committed an offence of the kind we are dealing with here to a non-incarceratory sentence. The most such an offender can hope for is a reduction in the time he or she would otherwise have served: see, e.g., *R. v. Dinn* (unreported decision of Newfoundland. C.A., January 26, 1993) in which a 79-year-old woman was only given a two-year sentence for assaulting young children.
>
> 37 An accused's infirmity, always a factor to be considered, may warrant a reduction in the sentence that would otherwise have been imposed or a different kind of sentence. It all depends on the nature and effect of the infirmity and the nature and seriousness of the crime. Compassion must neither be stifled nor allowed to take control.

[157] In *R. v. GRB,* 2013 ABCA 93, the Court commented on the kind of proof required at sentencing for a court to consider such a reduction:

> [18] There is no doubt that the respondent, now in his early seventies, suffers from a number of medical conditions that are age-related, and that these could become health or life-threatening for him, as they would for any person of his age. It is no surprise that he suffers from anxiety and depression as a result of the charges that he faces. However, there was no evidence that his medical needs could not be accommodated in the prison system. Any reduction in sentence on compassionate grounds should be based on "current, clear and convincing" evidence: *R v Potts*, 2011 BCCA 9, at para 85.

[158] In *R. v. Premji*, 2021 ONCA 721, the Ontario Court of Appeal held that the trial judge's failure to consider the appellant's advanced age amounts to an error in principle, having a material impact on the appropriate sentence [at para. 5]. Similarly, in *R. v. J.N.O.,* [1993] N. J. No. 15, the Newfoundland Court of Appeal considered the advanced age of the offender to be a mitigating factor [at para. 15].

[159] Lastly, in *R. v. Nygard,* 2024 ONSC 4837, the Court took into account the offender’s advanced age and health issues into account, but explained that there was limit to the amount of mitigation associated with his age and health.

[160] As previously mentioned, in determining a just and appropriate sentence for an elderly offender with serious health issues and a short life expectancy in the context where the gravity of the offences is severe and moral culpability is high, a measure of restraint is required, but it cannot justify a sentence that is

disproportionate to the gravity of the offences and his moral blameworthiness. The challenge here is to ensure that the overall length of the custodial period imposed reflects the sentencing goals, including denunciation, deterrence (specific and general), rehabilitation, the need to separate offenders from society where necessary, and the general imperative of promoting respect for the law and the maintenance of a just, peaceful and safe society: *Criminal Code*, s. 718. The authorities, however, recognize that where the ultimate effect of the combined sentences is to deprive the offender of any hope of release or rehabilitation, the functional value of these sentencing principles meets the point of diminishing returns. As stated in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500:

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

[161] While mindful of these instructive comments, I must also be recognizant that Mr. Guthro's advanced age, health situation, and life expectancy should not overwhelm the principles of sentencing so as to result in a sentence which fails entirely to reflect the seriousness of the offences and Mr. Guthro's moral culpability [see *R. v. Premji*, [2021] O. J. No. 5235, at para. 6]. I must also consider the Supreme Court of Canada's clear directions in Friesen that imposing proportionate sentences that respond to the gravity of sexual offences against children and the degree of responsibility offenders will frequently require substantial sentences. [at para. 114]. Indeed, the Court emphasized that Parliament's statutory amendments have strengthened that message.

[162] I have considered Mr. Guthro's advanced age, health issues, life expectancy, and the Supreme Court of Canada's comments in *M. (C.A.),* that "in exercising

judicial sentencing discretion under the *Criminal Code,* judges should generally refrain from imposing a fixed-term sentence which so greatly exceeds an offender's expected remaining life span". The global sentence of 20 years would greatly exceed Mr. Guthro's expected remaining life span. I have accounted for that in my application of the totality principle and considered the comments in *M. (C.A.).*

[163] The imposition of a just and appropriate sentence is a difficult task for a judge. I take no pleasure in sentencing Mr. Guthro. As difficult as that task may be, however, the process has a narrow focus. It aims at imposing a sentence that reflects the circumstances of the specific offence and the attributes of the individual offender. Sentencing is not based on group characteristics, but on the facts relating to the specific offence and offender as revealed by the evidence adduced in the proceedings.

[164] Although the sentencing process is necessarily an individualized process, the judge must also consider the nature of the offence, the victims and community. As Lamer C.J. noted in *M. (C.A.)*, sentencing requires an individualized focus, not only on the offender, but also on the victim and community.

[165] For the reasons I will now explain, I conclude that a sentence of ten years is just and appropriate. This sentence is a meaningful double-digit term. This is a case where the sexual violence was so serious and prolonged that the applicable sentencing principles demand a significant penitentiary term. As the Court noted in *Friesen*:

> 114… [J]udges must retain the flexibility needed to do justice in individual cases, and to individual sentences to the offender before them. Nonetheless, it is incumbent on us to provide an overall 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 not be neither unusual nor reserved for rare or exceptional circumstances…

[166] It should, however, be noted that Mr. Guthro's advanced age, health, and life expectancy should not dominate the sentencing calculus. If they did, the sentence could reduce an otherwise fit sentence to one which is manifestly unfit in the circumstances.

[167] As emphasized earlier, the circumstances surrounding the commission of these offences are shocking. Mr. Guthro abused his three children to satisfy his own sexual and personal gratification. The offences have all the hallmarks of an incestuous preparator cultivating an environment of sexual abuse in which his three

young vulnerable children were repeatedly subject to his sexual gratification, which he tried to normalize.

[168] Consequently, Mr. Guthro's age should not override the gravity of the offences and other considerations, such as the need for an emphasis on denunciation and deterrence, nor does his age justify an unacceptably lenient sentence. The historical nature of these offences, and the passage of time, do not mitigate the gravity of the offences Mr. Guthro committed, which includes the harm to the victims, and the harm to society and its values. Moreover, it should not be seen that Mr. Guthro is benefitting from the culture of silence that he imposed on his children while they were most vulnerable. His three children remained silent because they were manipulated to believe that it would cause harm to them, individually, and to their family, if they did not. As expressed in the victim impact statements, their father's ability to manipulate them made them feel guilt and shame, which led them to keep silent. Apparently, that guilt and shame continued throughout their lives, until they recently had the courage to disclose their father's sexual violence. To impose a lenient sentence solely based on the passage of time would benefit an elderly offender who was able to manipulate his vulnerable victims into silence. In addition to the injustice in this case, this could have a chilling effect on victims of historical sexual assault from reporting.

[169] As the Supreme Court of Canada stated in *Friesen*, children are the future of our country and our communities. They are also some of the most vulnerable members of our society. They deserved to enjoy childhoods free of sexual violence. Unfortunately, the victims in this case did not enjoy childhoods free of sexual violence because of their father, Mr. Guthro. He subjected each child to his sexual gratification, which he tried to normalize. As young vulnerable children they were the most vulnerable and at risk in their home with their father, who they should have been able to trust. The impact of Mr. Guthro's offending has been sustained and profound, as described in each Victim Impact Statement. The challenge here is to impose a just and appropriate sentence that must take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle. As stated in *Friesen*, the wrongfulness and harmfulness impact both the gravity of the offence and the degree of responsibility of the offender [para. 75]. Therefore, taking the wrongfulness and harmfulness into account will ensure that the proportionality principle serves its function of ensuring that offenders are held responsible for their actions and the harm they caused [para. 75].

[170] As noted in *Friesen*, the fact that the victim is a child increases the offender's degree of responsibility, as the intentional sexual exploitation of children is highly morally blameworthy because children are so vulnerable. The proportionality principle requires that the punishment imposed be "just and appropriate" and nothing more [*Friesen* at para. 91].

[171] In considering the issue of what is a just and appropriate disposition for these offences and offender, Mr. Guthro, I am guided by the purpose and principles of sentencing as set out in s. 718 of the *Criminal Code* and governing authorities. In *R. v. Bissonette*, the Supreme Court of Canada explained that the penological objective of denunciation requires that a sentence express society's condemnation of the offence that was committed. The sentence is how society communicates its moral values (*R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 81). This objective must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity (C. C. Ruby, *Sentencing* (10th ed. 2020), at s.1.22).

[172] There is no mathematical formula for determining what constitutes a just and appropriate sentence. That is why the Supreme Court of Canada has described sentencing as a "delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community" (*M. (C.A.)*, at para. 91).

[173] The gravity or seriousness is determined by its normative wrongfulness. As explained in *Friesen*, protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the *Criminal Code.* Courts must impose sentences that are commensurate with the gravity of sexual offences against children and that reflect the normative character of the accused's actions and the consequential harm to children, their families, caregivers, and communities.

[174] Parliament's decision to repeatedly increase maximum sentences for sexual offences against children should be understood as shifting the distribution of proportionate sentences for these offences. As a rule, courts should impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences [*Friesen*, at para. 99]. Section 718.01 of the *Criminal Code* confirms the need for the courts to impose more severe sanctions for sexual offences against children. This sentiment resonates among the more recent cases that have interpreted and applied the Supreme Court of Canada's reasoning in *Friesen.*

[175] For all the foregoing reasons, I sentence Mr. Guthro to the following terms of imprisonment:

- The Offences against Susan Farrell: four years on each of counts 1 and 4, to be served concurrently.
- The Offences against Sheri Colbert: Count 5: two years; Count 8: four years; Count 9: fours years and Count 12: fours years. Counts 5, 8, 9, and 12 are to be served concurrently. However, the aggregate sentence of four years is to be served consecutive to the aggregate sentence in respect to Susan Farrell, which is four years.
- The Offences against Fredick Douglas Robertson: Count 14: two years; Count 16: two years. Count 16 is concurrent to Count 14. The aggregate sentence for these two offences is two years, which is consecutive to the aggregate sentences in respect to Sheri Colbert (four years) and Susan Farrell (four years).
- The total aggregate or global sentence for all eight offences is ten years.

Ancillary Orders

[176] Additionally, the following Ancillary Orders are granted:

1. *Sex Offender Information Registration Act* (SOIRA) Order for life pursuant to s. 490.013(2)(c) of the *Criminal Code,* for the offences where the maximum term of imprisonment for the offence is life;
2. DNA Order: Pursuant to s. 487.051, primary designated offences;
3. Firearms Order Prohibition Order for ten years, pursuant to s. 109 of the *Criminal Code*;
4. Non-Communication Order pursuant to s. 743.21 of the *Criminal Code*, wherein Mr. Guthro shall not communicate, directly or indirectly with the following individuals while he is serving his sentence:
a. Susan Farrell, her spouse and children;
b. Sheri Colber, her spouse and children;
c. Fredrick Douglas Robertson, his spouse and children

Hoskins, J.