

CANADA / JUDGMENT

## R. v. B.H.H.

2025 BCSC 2545

### COURT

Supreme Court of British Columbia

### DECIDED

5 December 2025

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2025 BCSC 2545 R. v. B.H.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.H.H.,

2025 BCSC 2545

Date: 20251205

Docket: 37687

Registry: Fort St. John

Rex

v.

B.H.H.

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Before: The Honourable Justice Brundrett

Oral Reasons for Sentence

Counsel for the Crown:

A.M. Murray

Counsel for the Offender:

R. Larmer

Place and Date of Hearing:

Fort St. John, B.C.

December 4-5, 2025

Place and Date of Judgment:

Fort St. John, B.C.

December 5, 2025

## Introduction

- [1] The offender, Mr. H., was convicted on a two-count indictment of the sexual touching of a person under 16 years of age and sexual assault under ss. 151 and 271 of the Criminal Code, R.S.C. 1985, c. C-46 [the "Code"]. At the beginning of sentencing, counsel jointly proposed, and I agreed, that the sexual assault charge should be stayed and a conviction should be entered for sexual interference. Mr. H. is now before the Court for sentencing.
- [2] The offence occurred on October 6, 2021, in Fort St. John at the home of the complainant, A.L., where she resided with her grandmother, M.H. Mr. H. was the brother of M.H. and a great uncle to A.L. A.L. was 15 at the time but took her own life two-and-a-half months after the incident and was unavailable to testify at trial. The Crown's evidence was based on hearsay evidence, which was accepted at trial. Mr. H.'s exculpatory explanations of the presence of DNA on A.L.'s person and underwear were rejected at trial.
- [3] Mr. H. is Indigenous and is a member of the Fort Nelson First Nation community. The principles in Gladue thus affect the determination of an appropriate sentence. The complainant was also Indigenous and a member of the Fort Nelson First Nation.
- [4] The Crown seeks a sentence of five years' imprisonment and ancillary orders. The defence seeks a sentence of two years less a day, with two years' probation, or, in the alternative, a sentence of two to three years' incarceration. The issue for my consideration is the determination of the appropriate sentence having regard to the principles of sentencing, the circumstances of the offence, and the circumstances of the offender.

## Review of the facts

- [5] The circumstances of the offence are outlined in my reasons for judgment on conviction, reported at R. v. B.H.H., 2024 BCSC 2509.
- [6] In summary, A.L. was 15 years old at the time of the offence. She had lived with her grandmother, M.H., since shortly after her birth because her mother was unable to care for her. The offender, Mr. H., was M.H.'s brother and A.L.'s great-uncle. Mr. H. sometimes would come to town and stay with M.H. and A.L. for 1-2 days at a time.
- [7] The evening of October 5, 2021, was one of the occasions when Mr. H. stayed at M.H.'s residence. That evening, Mr. H. purchased alcohol for A.L. A.L. became quite intoxicated. At some point that evening, A.L. fell asleep on the bed in the recreation room in the basement. Mr. H. entered the room where she was sleeping and engaged in sexual relations with her.

He licked her all over her neck, stomach and chest. He performed oral sex on her and forced her to perform oral sex on him. He attempted to penetrate A.L. vaginally with his penis but was unable to because he had already ejaculated. Some of his semen was transferred onto her vaginal area and underwear.

- [8] A.L. was traumatized as a result of the incident when she awoke the next morning. She texted M.H. that "uncle [B] touched me." When M.H. went to check on A.L. after receiving this text message, A.L. asked M.H. to contact B.P., a close family friend who resided near the residence. When B.P. attended, A.L. was crying, hyperventilating, throwing up, and was distraught to the point of almost passing out.
- [9] A.L. was taken to the hospital. On the way to and at the hospital, A.L. started disclosing the events to B.P., noting that if she did not tell anyone, she was going to kill herself. While providing a statement to the police the next day, A.L. exhibited extreme emotional difficulties when talking about the critical aspects of that evening. For weeks after, A.L. had to stay with B.P. (the family friend who was called to her residence that morning and took her to the hospital) because she could not return to her own residence where the offence happened.
- [10] A.L. took her own life on December 23, 2021, a little more than two months after the offence. A.L. and M.H. had stayed up on the evening of December 22, 2021, until 6 a.m. on the morning of December 23, discussing what Mr. H. had done to A.L. M.H. then woke up at 9:30 a.m. to find that A.L. had taken her own life.

### Background of the offender

- [11] Mr. H. was born in 1958 in Fort St. John. He is now 67 years old and would have been 63 years old at the time of the offence. He is a status member of the Fort Nelson First Nation through his mother, though his father was indigenous as well. After Mr. H.'s conviction, the Court ordered a Gladue report. Olivia Thomas, a senior Gladue report writer, authors the Gladue report. It was filed on sentencing and sets out in detail Mr. H.'s personal history, current circumstances, the impact of policies toward Indigenous communities throughout Canada, and the relevant Gladue considerations in Mr. H.'s case.
- [12] Mr. H. was one of 14 children born to his parents, both of whom he recalled being absent for significant periods of time throughout his childhood. Mr. H.'s mother was a status member of the Fort Nelson First Nation Band, as was his father, who was disconnected from his heritage. His mother was an alcoholic and would often leave the children to go drink and party. He reported that she was verbally abusive when she was home. His father spent a lot of time travelling away from home for work as a truck driver. He described his father as a good role model.

- [13] Both of Mr. H.'s parents are now deceased. Neither of his parents was forced to attend a residential school. He described hearing his parents argue and his father having a bad temper, and that his father sometimes disciplined him with a strap. Despite this, Mr. H. reported to the Gladue report writer that his basic needs were met as far as food, clothing, and shelter, but he was negatively impacted by being left alone with his siblings throughout much of his childhood.
- [14] Mr. H. has spent a limited amount of time living on or near his Nation's reserve. He was raised off the reserve and did not return until the 1990s. Since then, he has had limited contact with his community and culture.
- [15] Mr. H. only has a relationship with two of his 14 siblings. Some of his siblings have not spoken to him "since the offence." He only attended school until grade six because school was difficult for him. Despite this, he describes reading and writing as his strengths.
- [16] Mr. H. started drinking at an early age but has been sober for nearly 30 years. He had early involvement with the criminal justice system. Despite the breakdown of his relationship with his sons' mother, he still maintained a good relationship with his sons.
- [17] Mr. H. stated that he began getting in trouble with the law and his parents by the age of 13. He also reported that he only attended school until grade six, as his parents were often absent. He recalled his challenges with learning to both report writers and described himself as still being very "limited" in his abilities. Mr. H.'s low educational attainment is a source of shame and embarrassment for him.
- [18] Mr. H. recalled drinking beer as early as age seven or eight and engaging in regular drinking by the time he was about 15. In addition to abusing alcohol, Mr. H. also abused cocaine and crack cocaine starting in his late 20s until his early 30s. Unfortunately, in 1980, Mr. H. overdosed on a drug colloquially known as "Rush," suffered a brain hemorrhage, and was in a coma for some time. Mr. H. told his Gladue Report writer that after this incident, he became more prone to violence and blacking out while drinking.
- [19] Mr. H. has a dated record that includes convictions from 1975 to 2003. The majority of his convictions are for break and enter, theft, and possession of controlled substances. He has one conviction for assault with a weapon from 2000, for which he received a 30-day jail sentence.
- [20] A forensic psychological assessment was conducted on Mr. H. prior to sentencing by Dr. Sirkia, a forensic psychologist. Dr. Sirkia's report noted that Mr. H. suffered from adverse childhood experiences, had previously abused alcohol and drugs, but had never been diagnosed with a major mental health concern, and had ceased criminal involvement from 2003 until the present offence. She noted that he denied offending against the victim, A.L. When asked why A.L. would accuse him of this offence, he replied "I'm not sure why but I know my sister was very verbally abusive and was mixed up." Dr. Sirkia found that Mr. H.'s risk for sexual reoffending is in the low range but that sexual offender treatment may

benefit him and assist him in accepting responsibility.

### Victim impact information

- [21] The Crown filed four victim impact statements at sentencing. All were profound and conveyed the deep sense of loss felt by A.L.'s family, friends, and community.
- [22] I heard the statement of L.T., A.L.'s younger sister, about how her life has completely changed as a result of the offence committed against A.L., and the loss of her sister. She is scared of men now and has changed her life, becoming more guarded. As the younger sibling, L.T. felt powerless to give her sister emotional support because of her young age.
- [23] I heard from B.P., A.L.'s trusted family friend, about how the incident devastated A.L.'s family. She described how the two months following the assault "were hell" for A.L. A.L. suffered from feeling victimized and struggled to go to school, eat and function normally. B.P. expressed that A.L.'s name should be said with reverence; that she deserved to be loved and cherished, not used and abused.
- [24] The Crown read the statement of S.T., who was A.L.'s older sister by two-and-a-half years. She talked about how A.L. was full of grace. A.L. was one of her best friends, and she still feels she failed to protect A.L. She said A.L. was forced to carry shame she did not deserve and could not process.
- [25] I heard from G.A., A.L.'s family friend. G.A. similarly described the toll the offence had on A.L., her deep sense of loss as a result of A.L.'s death, and how their family and community had suffered. G.A. stated that her Christian faith has enabled her to forgive Mr. H., but that her forgiveness does not constitute approval and that she will hold him accountable forever.
- [26] Finally, though she has now passed, I well remember M.H.'s testimony at trial. She described at trial how A.L. was a beautiful person with many friends. She described A.L. as her copilot and said she woke up every day looking for her. I remember M.H.'s testimony that although she was filled with sadness, she did not hate Mr. H.

### Principles of sentencing

- [27] Determination of a fit sentence is informed by the general sentencing principles found in s. 718 of the Code, and the provisions that follow, as well as the common law.
- [28] The fundamental purpose of sentencing is to contribute to the respect for the law and the maintenance of a just, peaceful, and safe society: s. 718.1 of the Code. That purpose underlies the primary sentencing objectives of denunciation of unlawful conduct, deterrence of the offender and others from criminal conduct, separation of the offender from society where necessary, assisting in the rehabilitation of offenders, providing reparations to victims or the community, and fostering the offender's acknowledgment of responsibility and of the harm done to victims and the community: s. 718.

- [29] As sentencing is an individualized process, the relative emphasis to be given to the various objectives varies according to the particular offence and the offender's unique status and circumstances.
- [30] The Code stipulates additional essential principles of sentencing that must be considered to achieve the overall objectives. These include the principle that the sentence must be proportionate to the gravity of the offence and the offender's degree of responsibility.
- [31] Also relevant is the principle of proportionality, which mandates that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [32] Additionally, the sentence is to be increased or reduced to account for relevant aggravating or mitigating factors.
- [33] It is an aggravated factor under s. 718.2(a)(iii) of the Code that an offender abused a position of trust or authority in relation to a victim. The application of this factor is disputed and is further discussed below.
- [34] It is a statutorily aggravating factor under s. 718.04 that the abuse occurred in relation to a person who is vulnerable because of their personal circumstances, including because the person is Aboriginal and female. In such circumstances, the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence. I accept that this is a statutory aggravating factor here.
- [35] It is also a statutorily aggravating factor under s. 718.2(iii.1) that the offence had a significant impact on the victim. This factor applies here, though, as I discuss below, the suicide of the victim is a disputed aggravating factor.
- [36] Under s. 718.01 of the Code, 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. That section applies here.
- [37] In addition, under s. 718.2(a)(ii.1), evidence that the offender, in committing the offence, abused a person under the age of eighteen years, is a statutory aggravating factor. I note that this is also an element of the offence under s. 151, yet Friesen directs that the age of the victim is a significant aggravating factor: see paras. 134-136.
- [38] Section 718.2(e) of the Code embodies the principle of restraint and is of particular importance to Indigenous offenders. It reads:
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

- [39] In *R. v. Kehoe*, 2023 BCCA 2, Marchand J. (as he then was), comprehensively outlined the sentencing approach required by the cases of *R. v. Gladue*, 1999 CanLII 679 (SCC) and *R. v. Ipeelee*, 2012 SCC 13. He said this:
- [36] In *Gladue* . . . and *Ipeelee* . . . the Supreme Court of Canada made clear that s. 718.2(e) is remedial and is intended to deal with the continuing crisis of over-representation of Indigenous offenders in the Canadian criminal justice system . . .
- [37] This crisis is driven by the alienation, poverty, substance abuse, lower educational attainment, lower rates of employment, and prejudice experienced by Indigenous people in Canada. Sentencing judges are to take judicial notice of how Canada's colonial history and post-colonial assimilationist policies have translated into these terrible outcomes . . . These systemic and background factors do not excuse or justify criminal conduct. Rather, they provide the necessary context for understanding and evaluating case-specific information during the sentencing exercise . . .
- . . .
- [40] Accordingly, *Gladue* and *Ipeelee* transformed the approach to sentencing Indigenous offenders. As with all offenders, a judge sentencing an Indigenous offender must take a holistic approach to imposing a fit sentence that is proportionate to the seriousness of the offence and the moral blameworthiness of the offender . . . However, since the circumstances of Indigenous offenders are "significantly different" from those of non-Indigenous offenders, the judge must pay particular attention to two factors:
1. The unique systemic or background factors that may have played a part in bringing the particular Indigenous offender before the courts; and
  2. The types of sentencing procedures and sanctions that may be appropriate for the offender in the circumstances given their particular Indigenous heritage or connection.
- [40] I note, as the Alberta Court of Appeal did in *R. v. AD*, 2019 ABCA 396, that s. 718.2(e) requires that, in having regard to the circumstances of Aboriginal offenders, the courts do not discount the lives of or harms done to Aboriginal victims of crime, their families, and their communities. The circumstances of both the victim and the offender must be relevant factors and, along with other relevant factors, be considered by the sentencing judge to arrive at a fit sentence.
- [41] Since *R. v. Friesen*, 2020 SCC 9, there has been a recognition that sentencing for child sexual offences has historically been too low.
- [42] The Court of Appeal summarized the *Friesen* decision in *R. v. G.J.M.*, 2024 BCCA 82 at para. 1, as follows:
- [1] In *R. v. Friesen*, 2020 SCC 9, the Supreme Court of Canada established an analytical approach to sentencing for sexual violence against children that gives effect to its "profound wrongfulness and harmfulness": at para. 1. The Court sent a clear message: sentencing

judges must do more than simply state that sexual offences against children are serious; they must impose sentences that are commensurate with their gravity: Friesen at para. 76. This approach responds to society's deepened understanding of the far-reaching damage caused by sexual violence to children, and places them, and the harm that they suffer, at the centre of the discussion. Its application mandates increased sentences that reflect this modern understanding and Parliament's choice to increase the sentences imposed for such crimes: *R. v. Bertrand Marchand*, 2023 SCC 26 at paras. 31-32.

[43] In reformulating the approach to sexual offences involving children, the Court in Friesen provided the following guidance about the seriousness of child sex offences:

- a) The protection of children is one of the essential and perennial values of Canadian society (para. 42).
- b) Courts must accurately understand the harm of child sex offences to properly sentence offenders (para. 50).
- c) The law is shifting from focusing on sexual propriety to interfering with sexual integrity, which "enables greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity" (para. 55).
- d) Courts should focus attention on emotional and psychological harm instead of just physical harm (para. 56).
- e) Sexual violence causes "ripple effect" harm to children by damaging their relationships with families, caregivers, and others with whom they are in a trust relationship, making them reluctant to participate fully in their communities (paras. 60-61).
- f) Because of these ripple effects, the family and community of victims become secondary victims who suffer profound harm from the offence (para. 63).
- g) Children are most vulnerable at home with those they trust (para. 66).
- h) Sexual violence against children disproportionately affects girls and thus perpetuates disadvantage for girls (para. 68).

*R. v. B-B*, 2025 BCSC 232, at para. 12.

[44] Friesen directed sentencing judges on how to impose sentences for sexual crimes against children that fully reflect the harm done as well as the wrongfulness of the conduct. At para. 76, the SCC stated as follows:

- [76] Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.
- [45] In *Friesen*, the Supreme Court of Canada explained Parliament's choice to give the objectives of denunciation and deterrence priority in cases that involve sexual offences against children:
- [105] Parliament's choice to prioritize denunciation and deterrence for sexual offences against children is a reasoned response to the wrongfulness of these offences and the serious harm they cause. The sentencing objective of denunciation embodies the communicative and educative role of law (*R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 102). It reflects the fact that Canadian criminal law is a "system of values". A sentence that expresses denunciation thus condemns the offender "for encroaching on our society's basic code of values"; it "instills the basic set of communal values shared by all Canadians" (*M. (C.A.)*, at para. 81). The protection of children is one of the most basic values of Canadian society (*L. (J.-J.)*, at p. 250; *Rayo*, at para. 104) .
- [46] At para. 136, the Court held that sentencing judges must be cautious to impose proportionate sentences in circumstances involving adolescent girls who are sexually victimized:
- [136] At the same time, courts must also be particularly careful to impose proportionate sentences in cases where the victim is an adolescent. Historically, disproportionately low sentences have been imposed in these cases, particularly in cases involving adolescent girls, even though adolescents may be an age group that is disproportionately victimized by sexual violence . . . In particular, sexual violence by adult men against adolescent girls is associated with higher rates of physical injury, suicide, substance abuse, and unwanted pregnancy . . .
- [47] The Court also provided guidance on how to assess the moral blameworthiness of the offender when determining a just and appropriate sentence for offences of a sexual nature: at paras. 88 to 90. The Court noted that sexual violence has a disproportionate impact on girls and young women (para. 68) and that such offences have a disproportionate impact on indigenous people (para. 70).
- [48] The Court also provided a non-exhaustive list of significant factors to consider in determining a fit sentence for sexual offences against children, including the offender's likelihood to reoffend, the abuse of a position of trust or authority, the duration and frequency of sexual violence, the age of the victim, the degree of physical interference, and victim participation: see paras. 121-154.

## Analysis

### Whether the offence caused A.L.'s Death

- [49] The Crown and the defence differ on whether the offence played a causative role in A.L.'s suicide. As this is alleged to be an aggravating factor on sentencing, the burden is on the Crown pursuant to s. 724(3)(e) of the Code to prove aggravating facts beyond a reasonable doubt.
- [50] There was discussion among counsel as to whether the offence was a dominant, sole, or a significant contributing cause of A.L.'s death. However, I am not dealing with the causation of harm at trial where a significant contributing cause threshold is required as an element of the offence: see *R. v. Mabin*, 2012 SCC 24. Counsel for Mr. H. referred me to the decision in *R. v. Petrovic*, (1984), 10 D.L.R. (4th) 697, 1984 CanLII 2003 (Ont. C.A.), which was also cited in *R. v. Coban*, 2022 BCSC 1810, for the proposition that a victim's suicide is an inappropriate factor in sentencing when the offender has been convicted of a crime for which the victim's death is not an essential element. I note that Mr. H. was not charged with a homicide-related offence, and I would not sentence him as if he were.
- [51] For the purposes of sentencing, however, I am required to take into account the impact of the offence upon A.L., considering her age and other personal circumstances, which is a statutory aggravating factor pursuant to s. 718.2(iii.1) of the Code. In *R. v. Quash*, 2019 YKCA 8, at para. 30, a majority of the Court held that this section requires more than an acknowledgement of harm; it requires the judge to consider "evidence that the offence had a significant impact on the victim" to be an aggravating circumstance.
- [52] As noted above, Friesen directed sentencing judges to recognize and give effect to the potential harm to children that flows from these offences and the actual harm that a specific victim has experienced as a result of the offence: para. 76. Consequential harm is a key determinant of the gravity of the offence: para. 85. A.L.'s suicide may therefore form one part of the evidence about the impact of the offence on the victim and, at a psychological level, may indicate the degree of emotional harm resulting from the offence. I disagree with the offender's submission that a finding of causation necessarily requires expert evidence. Harm and causation can be inferred from the circumstances in this case.
- [53] Here, I have no difficulty in finding beyond a reasonable doubt that the offence was a significant contributing factor in A.L. deciding to take her own life. A.L. was traumatized the day after the offence, as demonstrated by her panicking and vomiting. She mentioned the possibility of suicide to B.P. that day. She remained with B.P. for two weeks after the offence and, on some occasions, thereafter. A.L. took her own life almost 2.5 months after the offence. She stayed up all night on December 22, 2021, discussing the offence with her grandmother, M.H. She was then found deceased early the next morning. There may have been other causes of A.L.'s tragic death, though they are largely speculative on the record before me. The timing and the circumstances lead irresistibly to the conclusion that the

sexual offence committed by Mr. H. was a significant contributing factor in A.L. deciding to take her own life.

- [54] Although I am able to reach this conclusion without the aid of the victim impact statements filed at sentencing, the victim statements constitute admissible evidence in this regard (Friesen at para. 85), and their content confirms my conclusion. The impact statements of the friends and family members who knew A.L. best support no other conclusion than that the offence played a significant role in A.L.'s ultimate suicide.
- [55] I find, beyond a reasonable doubt, based on the evidence presented at trial and at sentencing, that the impact of the offence on A.L. was substantial and caused her to become despondent, traumatized, and occasionally suicidal in the days and weeks following the offence. This was a profound emotional and psychological impact upon A.L., who, at her tender age, was ill-suited to handle such a grossly unfair life challenge. I find that the offence caused personal trauma for her and ultimately played a significant role in her decision to commit suicide, regardless of whether it was the sole or dominant cause of A.L.'s death.

### **Whether Mr. H. was in a position of trust**

- [56] Counsel disagree as to whether Mr. H. was in a position of trust relative to A.L. at the time of the offence. As noted above, abuse of a position of trust is an aggravated factor under s. 718.2 of the Code.
- [57] The Crown submits that Mr. H. abused a position of trust. He was her great-uncle and had a family relationship with her. While the Crown acknowledges that Mr. H. and A.L. were not particularly close, it argues that had Mr. H. not been a member of the family, he would not have been in a position to stay at the residence and have the opportunity to commit the offence.
- [58] Counsel for Mr. H. submits that there was no position of trust in the case at bar. He notes that Mr. H. had no responsibility for A.L., was not close to her, and spent only a very small amount of time with her.
- [59] Both counsel recognize that there is a spectrum of positions of trust. Trust relationships arise in varied circumstances and should not all be treated alike: Friesen at para. 125. A breach of trust is likely to increase the harm to the victim and thus the gravity of the offence: Friesen, at para. 126. At para. 119 of Friesen, the court said this:
- [129] The abuse of a position of trust is also aggravating because it increases the offender's degree of responsibility. An offender who stands in a position of trust in relation to a child owes a duty to protect and care for the child that is not owed by a stranger. The breach of the duty of protection and care thus enhances moral blameworthiness (R. v. S. (W.B.) (1992), 73 C.C.C. (3d) 530 (Alta. C.A.), at p. 537). The abuse of a position of trust also exploits children's particular vulnerability to trusted adults, which is especially morally

blameworthy (D. (D.), at paras. 24 and 35; Rayo, at paras. 121-22).

[60] Mr. H. had infrequent contact with A.L. However, he was treated by M.H. as a responsible person and was relied upon to do the right thing vis-à-vis the children in her care. He was a family member who stayed overnight sometimes at M.H.'s home, and he was trusted to stay downstairs only a few feet from the room where A.L. slept. This position enabled him to exploit and victimize A.L. in the family home, where she should have felt the safest: similarly, see *R. v. S.B.T.*, 2010 BCCA 145 at para. 17. I agree with counsel that had he not been in a trusted position, he would never have had an opportunity to commit the offence.

[61] I accept that Mr. H. was a trusted adult vis-à-vis A.L., but on the continuum of such relationships, I find that their relationship falls toward the middle of the spectrum of trust.

#### Aggravating and mitigating factors

[62] The aggravating factors here include the following:

- a) A.L. was vulnerable because of her circumstances, including the fact that she was Aboriginal and female (s. 718.04);
- b) A.L.'s age, at 15 years, is a statutory aggravating factor (s. 718.2(a)(ii.1)), and I am cognizant of the caution in *Friesen* against disproportionately low sentences for the abuse of adolescent girls;
- c) there was a significant disparity in age between A.L. and Mr. H., who was almost 50 years older than her;
- d) the offence caused profound psychological harm to A.L., which I find included profound emotional harm, and which I find played a causative role in her decision to commit suicide (s. 718.2(iii.1));
- e) the offence caused profound harm to A.L.'s family, friends and her community;
- f) the offence occurred in A.L.'s home is an aggravated factor because it damages the child's sense of security in the home environment (*Friesen* at para. 178);
- g) the fact that Mr. H. abused a position of trust in relation to A.L. is a statutory aggravating factor under s. 718.2 of the Code, though his position of trust was not as close as a step-parent or an older sibling;
- h) Mr. H. supplied A.L. with liquor, which incapacitated her and made her less able to resist; and
- i) the degree of interference with the victim's bodily integrity, involving forced oral sex and attempted penile-vaginal intercourse, was significant.

- [63] In addition, Mr. H. has a dated criminal record with numerous convictions between 1975 and 2003. He does have a conviction for assault with a weapon in Fort Nelson on July 5, 2000. Overall, however, I find that Mr. H.'s record is of minimal relevance in determining a fit sentence for his current offence.
- [64] I note that the offence here involved a single incident of sexual violence rather than a course of conduct or multiple incidents over a long period, as is seen in some cases. Duration and frequency are therefore not aggravating factors in this case. However, as the Court stated in Friesen at para. 58, even a single instance of sexual violence can permanently alter the course of a child's life. I find that this is what occurred here.
- [65] Mitigating factors include the following:
- a) aspects of Mr. H.'s early life and upbringing were difficult;
  - b) he has remained offence-free since 2003;
  - c) he has a history of gainful employment;
  - d) he is indigenous and is a member of a historically marginalized group;
  - e) he has managed to control his addictions for the last 30 years;
  - f) he has been on restrictive bail for the previous four years without any breaches of his bail conditions; and
  - g) he has been assessed as a low risk to reoffend.
- [66] I note that Mr. H. denied the offence at trial by offering an incredible account of events, which I rejected as untrue. Remorse is not present as a mitigating factor.
- [67] Counsel noted that Mr. H. should receive credit for a day he spent in pre-trial custody. At roughly 1.5:1 credit, I would round this figure to two days' credit for pre-sentence custody.

## Comparable cases

- [68] There is no established range for sexual violence against adolescents following the decision in Friesen. At a general level, the Court in Friesen stated 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": para. 114.
- [69] The Crown brought the following cases to my attention for comparison: Friesen (6 years), R. v. Nahanee, 2022 SCC 37 (8 years), R. v. C.C.C., 2021 BCSC 599 (5 years), R. v. Sieber, 2024 BCSC 626 (40 months), R. v. P.W.R., 2023 BCSC 2474 (two years less a day and three years probation).

- [70] In the leading case of Friesen, the offender met the victim's mother on a dating website and had a consensual sexual relationship with her. The offender and the mother then subjected her four-year-old daughter to sexual violence. The Supreme Court of Canada unanimously restored a global sentence of six years on an offender who pleaded guilty to offences involving the violent sexual interference of a four-year-old child and attempted extortion of the child's mother. The Court referred to the six-year sentence as being on the lenient end of the spectrum of fit sentences: para. 166.
- [71] Except for Sieber, the defence submitted that the Crown's authorities were distinguishable and that the Crown position was more in line with cases where there is a significant position of trust, multiple ongoing major assaults, or a victim much younger than A.L. While Gladue factors were operative in Sieber, and that case is comparable, the impact upon the victim here is greater in that the offence ultimately led to her suicide weeks after the offence. As well, Mr. H. was in a position of trust in the present case, whereas in Sieber the offender was not: para. 75.
- [72] I would also consider the decision in *R. v. Harrison*, 2023 BCSC 1203 to be similar on its facts. In *Harrison*, a five-year sentence was imposed following a trial for a sexual assault by a 60-year-old male on a vulnerable, 14-year-old girl. The offender in *Harrison* was not in a position of trust, and Gladue factors were not present.
- [73] The defence cited the following authorities as being more appropriate comparators: *R. v. Alfred*, 2021 BCCA 71 (nine months, which the defence submitted was the bottom of the range), *R. v. P.*, 2021 BCSC 1563 (18 months), *R. v. Pauloosie*, 2022 NUCA 3 (two years less a day). The defence indicated that if a federal sentence is required, a sentence of 30-36 months would meet the principles of sentencing. In addition to the above, I have reviewed the dicta in *R. v. G.J.M.*, 2024 BCCA 82, *R. v. C.K.*, 2023 BCCA 468, and *R. v. J.F.D.V.*, 2025 BCCA 4, for guidance.

## The appropriate sentence

- [74] The offence of sexual interference of A.L. was a serious one, deserving of a sentence that reflects the principles of denunciation and deterrence. The sentence needs to be proportionate to the circumstances of the offence and the offender and reflect society's understanding of the inherent wrongfulness of sexual crimes against children and the harm they cause.
- [75] I take into account the aggravated circumstances noted above, including the profound impact that the offence had upon A.L. The offences took an incredible mental, emotional, and physical toll on her, to the point where she felt overwhelming trauma and ultimately committed suicide. As well, Mr. H. violated the position of trust that he was in in relation to A.L.'s family, a position that allowed him to commit the offence in the first place. A.L. was young, aboriginal, and female. Her circumstances made her vulnerable to unsuspecting victimization in her home by someone close to her. Together, these considerations

constitute compounding aggravating factors for sentencing purposes.

- [76] I regard the moral culpability of the offender for this offence as being at the higher end of the range.
- [77] This type of sexualized violence committed against a vulnerable girl in her own home is absolutely intolerable. As the Court stated in Friesen, protection of children is one of the most fundamental values of Canadian society. Sexual violence against children is especially wrongful because it turns this value on its head: para. 65.
- [78] I agree with the Crown and the case law cited to me that this kind of offending needs to be denounced in the strongest possible terms. By virtue of the application of ss. 718.01 and 718.04, I must give primary consideration to denunciation and deterrence.
- [79] That said, there is a tension between the principles of primarily focusing on denunciation and deterrence, where there is a young, Indigenous female child victim in a position of trust, and the requirement to consider all available sanctions other than imprisonment for Indigenous offenders. The fact that deterrence and denunciation are primary objectives does not mean that other sentencing objectives are irrelevant.
- [80] As noted above, there are some mitigating factors at play here, including the absence of related convictions and Mr. H.'s low risk of reoffending. I would also not lose sight of the principle of restraint. With respect to his aboriginal heritage, I would have regard to the unique systemic or background factors that contributed to bringing Mr. H before the courts, and to the type of sanctions that may be appropriate for him, given his Indigenous heritage and connections. I take notice that Mr. H. suffered some effects of colonization: he was the child of an alcoholic, he dealt with addiction himself, he did not attend school past grade six, and he had early involvement with the criminal justice system.
- [81] However, Gladue factors are not as compelling here as they are in many cases where such offenders suffer from personal or family trauma, the impact of colonization, and the intergenerational legacy of residential schools. As well, Mr. H. has not shown remorse, and I expect that his rehabilitation may be challenging given that he continues to deny the offence.
- [82] Overall, I find the defence's proposed sentence too low. A more substantial penitentiary sentence is warranted.

## Conclusion

- [83] Mr. H., would you please stand?
- [84] After taking all relevant factors into consideration, I sentence you to serve a jail sentence of four-and-a-half (4.5) years imprisonment. To this sentence, you will be given credit for two days pre-sentence custody based on one day actually served. After the deduction of credit, the sentence is four and a half years, less two days.

- [85] You may have a seat while I deal with secondary orders.
- [86] Sexual interference is a primary designated offence. As such, there will be an order for such DNA samples pursuant to s. 487.051(1) and 487.04 of the Code to be taken from him that are reasonably required for the purposes of DNA analysis.
- [87] There will be an order pursuant to s. 109(1)(a) and (2) of the Code that Mr. H. be:
- a) prohibited from owning, possessing, or carrying any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, firearm part, ammunition, and explosive substance for a period of 10 years; and
  - b) prohibited from owning, possessing, or carrying any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [88] I order under s. 490.012 of the Code that Mr. H. comply with the Sex Offender Information Registration Act (SOIRA) for a period of 20 years pursuant to s. 490.013(2)(b) of the Code.
- [89] Given Mr. H.'s assessed risk and the fact that he is a first-time offender, I regard the SOIRA order above as sufficient in the circumstances and decline to make an order under s. 161 of the Code.
- [90] I exercise my discretion under section 737(2.1) of the Code and order that no victim surcharge is payable.
- [91] Pursuant to section 743.2 of the Code, this Court shall forward a copy of its reasons for sentence, when transcribed, the Gladue report, and the Psychiatric Report to the Correctional Service of Canada.
- [92] I wish to thank counsel for their helpful submissions and their capable handling of this challenging case. We will adjourn.

"Brundrett J."

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