

CANADA / JUDGMENT

R. v. Coban

2022 BCSC 1810

COURT

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2022 BCSC 1810 R. v. Coban

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Coban,

2022 BCSC 1810

Date: 20221014

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Registry: New Westminster

Rex

v.

Aydin Coban

Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

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Place and Dates of Hearing:

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October 11-13, 2022

Place and Date of Judgment:

New Westminster, B.C.

October 14, 2022

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THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [1] Amanda Todd. That is the name of the innocent young girl who was cruelly and relentlessly victimized by Aydin Coban, an internet sextortionist, from November 2009 to February 2012. Amanda was only 12 years old when the torment began, and her story ended tragically when, at age 15, she died by suicide.
- [2] Amanda's father described Mr. Coban as an unrelenting presence that permeated every waking moment of his daughter's life. In his words, at a time when Amanda should have been living a carefree childhood, Mr. Coban was a "creeping evil lurking presence constantly circling in the shadows".
- [3] Although Amanda's passing meant she could not tell her story before this Court, she shone a light into those shadows when she uploaded a video to YouTube in September 2012. In the video, Amanda courageously told the "neverending story" of a mistake she could not take back--an intimate photo, captured in an instant, that was "out there forever". Using flashcards, Amanda told of an internet predator who preyed on her vulnerability, used her

intimate images against her, and pursued her, callously and incessantly, in an attempt to extort further pornographic materials from her. Amanda's video also described her experience with bullying, cyber-bullying, and mental health struggles. Her video quickly went viral, and Amanda's name is now known across the globe. In 2012, when the internet was much less ubiquitous than it is today, Amanda's story exposed a darkness on the internet and made known the predators--like Mr. Coban--that lie waiting in the shadows to prey on young children like her.

- [4] So, while Amanda cannot be here in court with us today, I have heard her voice: I have considered Amanda's words, as expressed through her video and through messages she sent while she was alive. I have considered the tremendous suffering that these offences caused her. I have also considered the evidence of her parents and others known to her about the effect these offences had on her and on them.
- [5] Amanda's parents, Carol and Norm Todd, courageously read their victim impact statements at this sentencing hearing. I was moved by the dignified expression of the profound outrage and despair they experienced from witnessing the distress that Mr. Coban caused their daughter, and the enduring emotional toll that Mr. Coban's conduct has had on their own lives. Although I know that no sentence imposed by this Court will ever come close to erasing the pain they feel, and the pain Amanda felt, as a result of these offences, I have considered their victim impact statements in assessing the appropriate sentences to be imposed for Mr. Coban's callous offences.
- [6] Aydin Coban is before this Court for sentencing for five offences, all of which pertain to Amanda Todd, committed between November 2009 and February 2012. These offences are:
- Extortion contrary to s. 346 of the Criminal Code, R.S.C. 1985, c. C-46 [Code];
 - Possession of child pornography for the purpose of distribution contrary to s. 163.1(3) of the Code;
 - Possession of child pornography contrary to s. 163.1(4) of the Code;
 - Luring a child contrary to s. 172.1 of the Code; and
 - Criminal harassment contrary to s. 264 of the Code.
- [7] On August 6, 2022, a jury found Mr. Coban guilty of all five offences.
- [8] The Crown submits the appropriate sentence is a global sentence of 23 years' imprisonment, reduced to 12 years by application of the totality principle.
- [9] In their written submissions the defence submitted that an appropriate global sentence would be one of 6 years' imprisonment. They submitted that this sentence should be served concurrently to Mr. Coban's Dutch sentence. In their oral submissions, the defence clarified that this is their alternative position. Instead, the defence primarily seeks an effective global sentence of 2 years' imprisonment, to be served consecutively to Mr. Coban's Dutch

sentence. The defence says that the aggregate of a 2-year Canadian sentence and Mr. Coban's Dutch sentence would be fit and appropriate in the circumstances.

Circumstances of the Offences

- [10] As this was a jury trial, I must determine the facts upon which the sentence will be based, and in particular must accept as proven all facts that are essential to the jury's verdict of guilt: *R. v. Ferguson*, 2008 SCC 6 [Ferguson] at para. 17, citing s. 724(2) of the Code. As noted in Ferguson:
- [16] This poses a difficulty in a case such as this, since, unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.
- [11] While there is some agreement between the Crown and defence on the facts, the defence disagrees with the Crown on: the degree to which Mr. Coban's offending contributed to Amanda Todd's suicide; the effectiveness and nature of Mr. Coban's 'friendly' luring of Amanda; the role, if any, that trust played in Amanda and Mr. Coban's relationship; and the attribution to Mr. Coban of all the aliases referred to in the evidence.
- [12] I will address the issue of Amanda's suicide and Mr. Coban's luring aliases in greater detail later in these reasons. I note at the outset, however, that based on the jury's verdict and the comprehensive evidence presented at trial, I am satisfied that Mr. Coban was the author of the messages sent by all aliases in evidence.
- [13] With Ferguson and the parties' submissions in mind, I will proceed to set out the circumstances of the offences based on the facts as I have found them to be proven by the evidence at trial.
- [14] Over more than two years between November 2009 and February 2012, Mr. Coban used 22 online aliases on four different social media platforms to extort and lure Amanda Todd into performing pornographic cam shows for him--i.e., live performances, explicit in nature, performed and viewed online. Mr. Coban was in his early-to-mid 30's at the time of the offending. Mr. Coban used 15 of his 22 identified aliases to aggressively extort Amanda, and used some of the remaining 7 aliases to attempt to lure Amanda on the guise of online friendship. For ease of reference, I have italicized Mr. Coban's numerous aliases in these reasons.
- [15] In total, Mr. Coban sent Amanda more than 700 online messages. In these messages, Mr. Coban backed his extortion of Amanda by persistent and harassing threats that he would distribute images and videos depicting Amanda already in his possession. When Amanda refused to comply with his demands, Mr. Coban made good on his threats and distributed

child pornographic materials depicting Amanda to members of Amanda's community, including her friends, peers, family, and school staff. As I will discuss, other than the video sent in November 2009, all of these materials constituted child pornography as defined by s. 163.1(1) of the Code.

- [16] The offending behaviour occurred over four episodes beginning on November 9, 2009. On that date, Amanda received a message on the social media platform Facebook from an account with the name Daimon Luci, which included a video of her dancing. Amanda described the video as depicting her dancing with "short shorts and I have my shirt up so my belly is showing".
- [17] In the message, Mr. Coban, posing as Daimon Luci, demanded that Amanda provide him her address on Skype, an online video and messaging platform. Mr. Coban threatened to send the video of Amanda dancing to all of her family if Amanda did not comply with his demand. Mr. Coban identified Amanda's birthdate and named various members of Amanda's family, including her father. Amanda was only 12 years old when she received this message.
- [18] There is no evidence that during this interaction Amanda provided Mr. Coban her Skype account information. Yet one month later, using another alias, marzattack1, Mr. Coban sent Amanda a Skype message telling her it was her last chance to comply before he sent the video of her dancing to "everyone in [her] facebook, school and newspapers in [her] city". There is no evidence that Mr. Coban distributed it further.
- [19] Although the parties agree that the video of Amanda dancing in her shorts does not constitute child pornography, it nonetheless caused Amanda significant distress. Amanda sent her friends messages during the first extortive episode advising that she was scared by the video's threatened distribution. In these messages, Amanda also identified the person behind the Daimon Luci and marzattack1 aliases as her 'stalker'.
- [20] The second episode occurred in December 2010. Between December 19 to 22, 2010, Mr. Coban used the alias toddit on Skype and whatsthisman11 on the online video platform YouTube to extort Amanda into performing cam shows. Using whatsthisman11, Mr. Coban demanded that Amanda add him to Skype using an account he had created. Mr. Coban told Amanda that if she did not perform these shows for him, he would distribute a video, hosted on the filesharing site motherless.com, depicting Amanda with her shirt lifted up and her breasts exposed.
- [21] Amanda failed to comply with Mr. Coban's demands, and instead sought assistance from Kody Maxson, an online friend. Mr. Coban responded by sending a message threatening to take her and Kody Maxson down, and told her that "I am not an amateur"--a reference he repeats as the torment continued.
- [22] Between December 22 and 24, 2010, Mr. Coban followed through on his threats using Facebook aliases Alice Mcallister and Kody Maxson. As Alice Mcallister, Mr. Coban posed as someone from an independent online child protection agency and sent messages to

members of Amanda's family and some family friends. Attached to the message was a link to the same video hosted on motherless.com. At trial, Carol Todd testified that her heart "skipped a beat" when she clicked on the link from Alice Mcallister and saw the image of her topless daughter.

- [23] Similarly, under the Kody Maxson alias, Mr. Coban distributed a link to the motherless.com video to 99 Facebook users. Among these Facebook users were Amanda's friends and peers. Mr. Coban then engaged in conversations with many of the users. In these conversations, Mr. Coban mocked Amanda for being a 'slut' and having 'nasty' or 'awkward' nipples, and encouraged recipients of the video to send it to others.
- [24] The third episode occurred in April and May 2011. Using the YouTube aliases iambackmissme and door1ordoor2, Mr. Coban sent extorting messages to Amanda demanding cam shows. On April 21, 2011, iambackmissme sent Amanda a message which began "Guess who is back, Miss me?" I find that this message references the earlier messages from whatthisman11 and the other aliases. In this message, Mr. Coban demands "5 shows of 30 minutes each or the same thing happens again at your new school", which I find is reference to the distribution of the video hosted on motherless.com in December 2010. Mr. Coban then gave Amanda the option to pick 'door 1', which is do what he asks, or 'door 2', which he described as to "fuck up my[her] life". When Amanda did not do what he wanted, Mr. Coban, using the YouTube alias door1ordoor2, posted a link of an image of Amanda with her breasts exposed on a channel comment, visible to anyone with access to YouTube.
- [25] In her Facebook posts between April 30 and May 3, 2011, Amanda asked her friends to report the door1ordoor2 alias because he was "blackmailing" and "harassing her". These messages reveal the distress and torment Amanda experienced from the relentless pursuit by Mr. Coban.
- [26] Following these messages, on May 4, 2011, Mr. Coban used the Miranda Todd Facebook alias to once more distribute a link to a photo depicting Amanda with her breasts exposed. Similar to the December 2010 Alice Mcallister message, Mr. Coban posed as a concerned person writing to advise members of the Todd family that Amanda was "still showing herself nekkid on internet". Amanda posted a warning to her Facebook friends not to respond to the Miranda Todd message.
- [27] The fourth episode occurred between October and December 2011. On October 23, 2011, Amanda received a Facebook message from the alias Tyler Boo which stated "sup camwhore, been a while" and demanded "3 shows of 15 minutes and then I wont send", with reference to a "new flash video". When Amanda told Mr. Coban's alias that she would not comply, he responded "u still think ur dealing with an amateur after the last time". I find that this is a reference to the previous episodes when Mr. Coban, using other aliases, distributed the video and images of Amanda. In these exchanges, Mr. Coban refers to Westview Secondary School, which was the school Amanda was enrolled in at the time.

- [28] When Amanda did not comply with his demands, Mr. Coban, as Tyler Boo, distributed two links to a video of Amanda with her breasts exposed, again hosted on motherless.com. Mr. Coban also sent links to photos of Amanda, hosted on the filesharing site imagevenue.com; one image depicted Amanda wearing an exposed green thong, while the other depicted Amanda with her hand in her pubic region making a suggestive facial expression. Mr. Coban sent these materials to Amanda and 19 other Facebook users, the majority of which were Amanda's friends. Mr. Coban also engaged in confrontational messages with several of Amanda's friends on Facebook regarding his messages.
- [29] During the same episode, in addition to the Tyler Boo alias, Mr. Coban also used three other aliases--Austin Collins, Monica Stewart and Katie Hutchkins--to distribute pornographic material using Facebook and the email platform Gmail. Both Monica Stewart and Katie Hutchkins posed as concerned persons who had received anonymous reports about Amanda, similar to the 2010 messages from Alice Mcallister. The Austin Collins alias, meanwhile, posed as one of Amanda's peers, mirroring Mr. Coban's previous Kody Maxson alias.
- [30] Specifically, Mr. Coban used the Monica Stewart Facebook alias and Katie Hutchkins Gmail alias to distribute a motherless.com link of a video of Amanda with her breasts exposed. Mr. Coban also distributed links to images hosted on imagevenue.com similar to those distributed using the Tyler Boo alias, along with an additional image of Amanda with her breasts exposed. Mr. Coban used the Monica Stewart alias to distribute the materials to Amanda's family, and the Katie Hutchkins alias to send the same links to Amanda's school principal, two vice-principals and four school employees. One of the vice-principals testified at trial that she was shocked by the content of the email and forwarded it to the police. The same vice-principal also testified that many of the Facebook users Mr. Coban had distributed materials to throughout his offending conduct had names consistent with Amanda's adolescent peers.
- [31] On November 4, 2011, Mr. Coban created the Austin Collins Facebook account, posing as a teenage boy soon to be attending Westview Secondary School. He befriended hundreds of Amanda's school peers on Facebook; he then changed his profile image to an image of Amanda with her breasts exposed. Mr. Coban also posted links to pornographic videos and images of Amanda on his Facebook wall and told Amanda that he sent the material to "about 280 westview peeps". Mr. Coban told Amanda to "enjoy the shitfest", which I find was a reference to the anticipated reaction once the material was distributed.
- [32] At trial, a student from Westview Secondary School described his reaction to seeing the pornographic image of Amanda. He was in grade eight at the time. Although most of their conversations were online, he considered Amanda a friend and knew it was wrong for someone to be using this image of her. He reported it to Facebook so the image could be taken down, and also contacted the police.

- [33] Amanda's messages to some of her Facebook friends at this time reveal that she considered her life was ruined, and that she was worried that the abuse and harassment would continue for the rest of her life. Carol Todd testified that Amanda shrieked when she saw that the Austin Collins alias had a photo of her with her breasts exposed as his profile photo. Both Carol and Norm Todd testified that Amanda was scared and frightened about the distribution of her image online. Clearly, Amanda, her school friends, school administrators, and parents were all affected by Mr. Coban's action.
- [34] Then, on December 23, 2011, using the Skype alias tylersike123, Mr. Coban sent Amanda a message stating he was playing nonstop her 'flash' videos on the live video and chat platform Omegle. Mr. Coban said that he would leave the videos on all week. Mr. Coban also warned that "soon I will start sending the videos again to other school buddies...or u can make me stop by listening". I find as a fact that the message from tylersike123 was in reference to the various demands by Mr. Coban for cam shows from Amanda in the previous episodes.
- [35] In total, Mr. Coban distributed 13 links containing pornographic videos and images of Amanda Todd. As discussed earlier, the parties agree that the link sent by Daimon Luci on November 9, 2009 was not child pornography. However, the other videos distributed by Mr. Coban of Amanda with her breasts exposed are child pornography, as their dominant characteristic is the depiction of Amanda Todd's breasts for a sexual purpose. In addition to the video, screen captures from the video depicting Amanda with her breasts exposed also constitute child pornography. Finally, when viewed objectively and in context, the image depicting Amanda wearing exposed underwear and the image depicting her with her hand placed in her pubic region constitute child pornography, as they depict her engaged in explicit sexual activity.
- [36] Apart from his extortive aliases, throughout the offending period ending in February 2012, Mr. Coban also employed his remaining aliases to lure Amanda using friendly conversation. Mr. Coban sometimes introduced sexually explicit topics during these conversations. Mr. Coban was aware that, at the outset of the offending, Amanda was only 12 years old. Mr. Coban also relied on a high level of technological sophistication and savvy to gain personal information about Amanda, maintain his anonymity, and hold himself out to Amanda as a teenager. Among other things, Mr. Coban employed: virtual private networks to hide his computer's internet protocol address; anti-forensic software to render inaccessible digital evidence of his offending conduct; and audio-visual software to mask his voice and surreptitiously present pre-recorded videos as if they were streaming live from his computer's webcam.

- [37] While some of the luring aliases were not successful, using the Tomas Coco Pops Facebook alias and the kelseyrain2 Skype alias, Mr. Coban succeeded in establishing an online friendship with Amanda. Using the Tomas Coco Pops Facebook alias, Mr. Coban communicated with Amanda between August 17 and December 10, 2010. He made various complimentary comments about her appearance and kept up with her Facebook activities and status posts.
- [38] Using the kelseyrain2 alias, Mr. Coban posed as an attractive young woman. He had numerous Skype chats and conversations with Amanda over a one-year period between December 22, 2010 and December 26, 2011. In the Skype messages Mr. Coban compliments Amanda on her appearance and asks "u still wanna try that stuff". When read in context, I find this question to be a reference to performing acts of a sexual nature on Skype.
- [39] In sum, Mr. Coban engaged in a prolonged pattern of sextortion targeting Amanda Todd, a child in her early-to-mid teens. Mr. Coban, relying on a high level of technological sophistication, obfuscated his identity, location and activities, gained information about Amanda valuable to his criminal scheme, and emotionally manipulated Amanda with both friendly inducements and distressing threats. On several occasions, Mr. Coban made good on these threats and distributed child pornographic materials depicting Amanda to her friends, family, and community. The abuse relentlessly followed Amanda as she switched schools across the Lower Mainland. As I discuss below, the distribution of these materials not only deeply affected Amanda but also the numerous persons Mr. Coban exposed to child pornography, and especially Amanda's parents, who had to witness their child endure abuse by an unknown, exceptionally cruel, and seemingly ever-present tormenter.

Impact on Victims

Impact on Norm, Carol, and Christopher Todd

- [40] The harm flowing from these offences is not limited to their direct impact on Amanda Todd. Amanda's parents and her brother--Carol, Norm and Christopher Todd--continue to suffer pain and anguish as a result of Mr. Coban's callous actions.
- [41] In his victim impact statement, Mr. Todd shared with this Court the helplessness he felt watching Amanda suffer daily torment while alive due to Mr. Coban's conduct, and the devastation he felt when he lost his daughter. Mr. Todd referred to Mr. Coban's behaviour as "diabolical". He explained how, at a time when she should have been living a happy, carefree childhood, Amanda was exposed instead to a "kind of daily torment that would bring even toughened adults to their knees". Mr. Todd reported that Amanda's "tormentor filled her every waking moments with fear, humiliation, anxiety, despair, and a desperation that should never be part of a young girl's life". He said he knew Amanda "could have made it through the high school struggles, if she had not been subjected to a constant barrage of torment and degradation". Mr. Todd continues to be burdened by the knowledge that he could not take Amanda's pain away while she was alive. Finally, he described the loss of

Amanda as the "most painful devastating loss of my entire life", and one that will never go away.

- [42] Carol Todd's victim impact statement was equally heartbreaking. Carol Todd bravely shared her most private thoughts and feelings with all in the courtroom. She provided us with a glimpse of the Amanda she knew, and said she saw this sentencing as an opportunity to "talk about how [Amanda] felt" based on "what she shared with me in the years before her death".
- [43] Carol Todd described Amanda as a once "vibrant child and a curious young person". Carol Todd advised that Amanda was a typical teenager who loved shopping, cheerleading, animals, art, music and singing, and that she was loving and trusting. She was also an avid user of the internet and, as Carol Todd described, it was Amanda's innocence and trusting nature that made her vulnerable to the "keyboard warriors" who lurk in the "the dark corners of the online world".
- [44] Carol Todd also shared the profound harm that she witnessed Amanda endure in the lead up to her death, as well as the enduring impact Amanda's torment and loss has had on herself emotionally and psychologically. In Carol Todd's words, Amanda "suffered immense emotional distress and trauma because of what Mr. Coban did to her". The experience of witnessing her child repeatedly targeted and harmed by Mr. Coban's abuse has engendered persistent feelings of guilt and shame in Carol Todd. She reported living with ongoing thoughts of what she could have done differently to ease Amanda's suffering during the offending period. Inflaming this distress is Carol Todd's unfortunate exposure to online trolling and shaming by those who blame her for Amanda's death, and who characterize her as a bad and uncaring mother. Despite the unimaginable pain and suffering she has endured, and the hostility she receives online, Ms. Todd has continued to share Amanda's story in an effort to expose the risks and harms associated with cyberbullying and the exploitation of young people by "keyboard warriors".
- [45] Carol Todd also read a victim impact statement from Christopher Todd, Amanda's older brother. He said Amanda lost her confidence due to the actions of others. He also shared the pain and suffering he feels at no longer having a sibling. The loss of Amanda has been life changing for Christopher. In his words, "I am not the same person I was or may have become because of the loss of my sister".

Impact on Amanda Todd

- [46] As I said at the beginning of these reasons, although Amanda is not with us, her voice has been heard. The messages she sent and a video she recorded provide a glimpse into the pain and suffering she experienced. In the messages, Amanda repeatedly described how the distribution of the videos and images to her friends, family, and others ruined her life, and how she lost everything. She expressed sadness, despair, fear, and worry that the torment would continue for the rest of her life. The Crown, in their submissions, pointed out that Mr. Coban's sextortion lasted two years--or more than one eighth of Amanda's life. The

December 23, 2011 message from tylersike123 indicated that the abuse would continue.

- [47] In her video recorded on September 7, 2012, one month before Amanda's death, she used flash cards to describe Mr. Coban's sextortion as a "neverending story". She said it caused her to suffer from anxiety, major depression, and panic disorder, and that it drove her to use alcohol and drugs. She explained that after the photo of her breasts was distributed, she cried every night, lost all of her friends, and lost all of the respect that people had for her. Amanda explained that she could "never get that photo back" because it was "out there forever". She also detailed an unrelated incident of bullying, and a suicide attempt shortly afterwards by drinking bleach. In the end of the video, she writes: "Im stuck whats left of me now..nothing stops. I have nobody I need someone. My name is Amanda Todd".
- [48] On October 10, 2012, just over one month before her sixteenth birthday, Carol Todd found her daughter deceased by suicide.

Mr. Coban's Circumstances

- [49] Mr. Coban is 44 years old, and was 31-34 years old during the relevant time-frame. He was born and raised in the Netherlands to parents who immigrated from Turkey. Mr. Coban was on track to attend university. However, he dropped out of school at age 16 to work fulltime to support his family after his father became ill.
- [50] Mr. Coban's father passed away when he was 17, but the defence advises that he remains close to his mother and siblings. To that end, the defence submitted three letters of support for Mr. Coban. Mr. Coban's sister authored one of these letters on behalf of Mr. Coban's mother. Mr. Coban's sister also provided her own letter of support, as did Mr. Coban's childhood friend. These letters generally describe Mr. Coban as hardworking, generous, and engaged in pro-social interests like music.
- [51] At the time of the offending, Mr. Coban had no criminal record. Between the offending and this sentencing, Mr. Coban has been convicted of numerous offences in the Netherlands, described below. Mr. Coban's time in custody in the Netherlands has been marked by significant isolation. On the record before me, and in particular based on a January 28, 2015 Dutch psychiatric evaluation provided by the defence, Mr. Coban's isolation is the result of a deliberate decision not to socialize with other inmates or participate in various programs available to him.

The Dutch Offences

- [52] On January 13, 2014, Mr. Coban was arrested in a bungalow outside of Tilberg in the Netherlands. He has been in custody since that date. Mr. Coban was prosecuted in the Netherlands for offences committed between January 1, 2008, and January 13, 2014. As a result, Mr. Coban has 68 convictions in the Netherlands. The overwhelming majority of these convictions are for offences committed against 33 female children and one young adult female (aged 18). Some of the victims were no older than nine or ten years old. The

offending is highly similar to this case. On several occasions, Mr. Coban threatened to ruin victims' lives and encouraged them to commit suicide. In addition to the offences against underage females, Mr. Coban was also convicted of charges relating to blackmail schemes against adult men, a drug offence, and an apartment fraud scheme.

- [53] Mr. Coban's convictions were registered on March 16, 2017. Mr. Coban received the maximum sentence available under Dutch law. Namely, he was sentenced to ten years and 243 days, after receiving credit on a 1:1 basis for pre-trial custody. According to the Dutch authorities, he is scheduled for release into the community in September 2023, and his sentence will expire in August 2024.
- [54] Mr. Coban was temporarily surrendered by the Netherlands to Canada for the purpose of the prosecution of the Canadian offences related to Amanda Todd. On December 7, 2020, he was arrested on the Canadian charges upon his arrival in Canada. He has remained in custody and has continued to serve his Dutch custodial sentence while in Canada.

Positions of the Parties

The Crown

- [55] The Crown seeks a global sentence of 23 years' imprisonment, reduced to 12 years on application of the totality principle, as follows:
1. Count 1 (extortion): 10 years consecutive, reduced to 6 years consecutive.
 2. Count 2 (possession of child pornography for the purpose of distribution): 3 years consecutive, reduced to 1 year consecutive.
 3. Count 3 (possession of child pornography): judicial stay pursuant to *Kienapple v. R.*, [1975] 1 S.C.R. 729, 1974 CanLII 14 [Kienapple].
 4. Count 4 (child luring): 10 years consecutive, reduced to 5 years consecutive.
 5. Count 5 (criminal harassment): 6 years concurrent to Count 1.
- [56] In support of its position, Crown counsel submits there are a number of aggravating factors and no mitigating factors in this case. According to the Crown, the aggravating factors mirror those set out in *R. v. Friesen*, 2020 SCC 9 [Friesen]. These include the inherent wrongfulness of sexual offences against children, the frequency and duration of Mr. Coban's offending, Amanda Todd's young age, the potential and actual harm to Amanda, and the fact that Mr. Coban's luring of Amanda involved a breach of her trust.
- [57] The Crown submits that deterrence and denunciation must be the primary considerations in sentencing Mr. Coban because his offences involved the sexual exploitation of a young person under the age of eighteen: s. 718.01 of the Code; *Friesen* at para. 102. Further, they submit that Mr. Coban is at a high risk of reoffending and should be separated from society. They submit there is no expression of remorse nor is there any evidence that Mr. Coban has acquired insight into his offending behaviour. They point out that Mr. Coban has not

demonstrated any interest in programming or rehabilitation while in custody.

- [58] The Crown also submits and the defence agree that Mr. Coban should not receive credit for pre-trial custody as he continued to serve his Dutch custodial sentence upon his arrival in Canada on December 7, 2020. The Crown further submits that the sentence imposed for Mr. Coban's Canadian offences should be served consecutively to his Dutch sentence.
- [59] The Crown primarily relies on the guidance provided by the Supreme Court of Canada in *Friesen*, which I discuss in greater detail below. In addition, both the Crown and defence refer me to the post-*Friesen* decision of *R. v. Sinclair*, 2022 MBCA 65 [Sinclair]. In that case, the Manitoba Court of Appeal considered an appeal by Mr. Sinclair and a cross-appeal by the Crown of a five-year global sentence for child luring, possession of child pornography, making child pornography, extortion, and distribution of child pornography.
- [60] Mr. Sinclair lured female children on the internet over a five-year period, using internet chat and gaming sites to communicate with them. He would then participate in video calls with those children over Skype, where he asked them to disrobe and expose themselves, and instructed them to masturbate. Mr. Sinclair would surreptitiously capture video and still images of the children engaged in sexual acts, which he saved into folders on his personal computer that were organized by the children's names. He made 112 child pornography images and 52 child pornography videos of 12 children. The youngest of the children was 13 years old at the time of the offending.
- [61] Mr. Sinclair also extorted a 17-year old victim by threatening to send nude images of her to her family and friends and to post them online if she did not provide him with more nude images. Mr. Sinclair ultimately did not make her image widely available but nonetheless distributed it to her and threatened to distribute it more widely in order to extort her into complying with his demands. Like Mr. Coban, Mr. Sinclair displayed a "callous attitude in the chats" that indicated he was receiving a "troubling degree of enjoyment from the interaction": Sinclair at para. 63. Also like Mr. Coban, Mr. Sinclair's offending was "specific, calculated, and detailed" and showed "insight, planning and forethought": Sinclair at para. 56. Mr. Sinclair showed no interest in rehabilitation. As I will discuss, nor has Mr. Coban.
- [62] The Manitoba Court of Appeal concluded that the sentencing judge erred in his assessment of proportionality, as the application of *Friesen* dictated a much higher sentence. The court at para. 79 adjusted the sentence to a global sentence of eight years, as follows:
- Child luring--five years reduced to three and one-half years for totality;
 - Possession of child pornography--two and one-half years consecutive to the child luring sentence, reduced to two and one-half years concurrent for totality;
 - Making child pornography--three years consecutive to the possession of child pornography sentence, reduced to one and one-half years consecutive for totality;

- Extortion--two years consecutive to the making child pornography sentence, reduced to one year consecutive for totality;
- Distributing child pornography--three years consecutive to the extortion sentence, reduced to two years consecutive.

[63] The Crown also relies on *R. v. Galatas*, 2020 MBCA 108, where the Manitoba Court of Appeal upheld a 16.5-year custodial sentence for an offender who was convicted of 19 sexual offences against two vulnerable children, aged 13 and 14. The court dismissed the appeal, referring to Friesen for the proposition that "mid-single digit penitentiary terms and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances": Friesen at para. 114.

The Defence

[64] The defence seeks an effective global sentence of 2 years' imprisonment when accounting for totality and made consecutive to the Dutch offences. In the alternative, the defence seeks a global sentence of 6 years' imprisonment to be served concurrently with Mr. Coban's Dutch sentence. They submit the 6 year sentence should be as follows:

1. Count 1 (extortion): 3 years.
2. Count 2 (possession of child pornography for the purpose of distribution): 1.5 years consecutive.
3. Count 3 (possession of child pornography): judicial stay pursuant to Kienapple.
4. Count 4 (child luring): 4.5 years concurrent to Count 1.
5. Count 5 (criminal harassment): 2 years concurrent to Count 1.

[65] The defence takes issue with the Crown's treatment of Amanda Todd's suicide as it relates to this sentencing. The defence contends that the Crown has mischaracterized Mr. Coban's offending as the "dominant cause" of Amanda's death, and cautioned that the suicide should in no way be viewed as an independent aggravating factor. The defence refers me to *R. v. Petrovic* (1984), 10 D.L.R. (4th) 697, 1984 CanLII 2003 (Ont. C.A.) 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.

[66] As well, the defence challenges the Crown's characterization of Mr. Coban's luring aliases, and the Crown's submission that Mr. Coban abused a position of trust in luring Amanda. The defence submits that in this case, the aliases employed by Mr. Coban to lure Amanda were largely unsuccessful and were "virtual strangers to her". The defence refers to *R. v. Poncelet*, 2008 BCSC 202 [Poncelet] for the view that positions of trust should generally be grounded in findings of vulnerability on the part of the victim and an inherent power imbalance between the offender and victim. As such, the defence submits that "[t]here is no evidence that [Amanda] invested any trust or confidence in any of these aliases, or relied or depended on

them in any way".

- [67] The defence further asks that I place limited weight on Mr. Coban's lack of expressed remorse for his offending. The defence submits that Mr. Coban's failure to attend rehabilitative programming while in custody in the Netherlands reflects a desire not to prejudice himself while awaiting a verdict for his Canadian charges, and emphasizes that in any event a lack of remorse should not be treated independently as an aggravating sentencing factor. The defence concedes that I may use a lack of remorse or responsibility to assess Mr. Coban's likelihood for reoffending, but argues that Mr. Coban's present incarceration for the Dutch convictions and related deterrence, as well as his prior lack of criminal record, make Mr. Coban not a particularly high risk to reoffend.
- [68] Additionally, the defence submits that Mr. Coban's luring sentence should run concurrently to the other Canadian sentences, and that the global Canadian sentence should be significantly reduced when made consecutive to the sentences imposed on Mr. Coban for the Dutch offences.
- [69] In terms of the luring offence, the defence submits that the vast majority of the luring messages in this case also formed the basis for the extortion and harassment charges. The defence concedes that the offence of luring generally protects different societal interests than the offences of extortion and harassment, but submits that in the particular circumstances of this case, these offences infringed the same legally protected interests and largely caused the same harm.
- [70] The defence refers me to s. 83 of the Extradition Act, S.C. 1999, c. 18 [Extradition Act] for the proposition, agreed to by the Crown, that I may make the Canadian sentences concurrent to the sentences of the Dutch offences. The defence submits that if I elect to make their proposed alternative global Canadian sentence of 6 years' imprisonment concurrent to the sentences of the Dutch offences, the resulting sentence would still offend the totality principle.
- [71] For one, the defence argues that if Mr. Coban had been tried in the Netherlands for the offences against Amanda Todd, sentences for those offences would have been included in the global approximately 11-year (i.e., maximum) sentence that Mr. Coban is presently serving. The defence also refers me to *R. v. MacArthur*, 2018 PECA 10 [MacArthur] and *R. v. Potts*, 2011 BCCA 9 [Potts], for the view that a court may be required by the totality principle to reduce a sentence imposed for an offence in light of sentences imposed for other offences in other proceedings. The defence submits that this consideration is particularly warranted in this case because Mr. Coban's Dutch sentences concern acts committed within the same course of conduct.
- [72] Finally, the defence refers me to several cases for the proposition that their proposed sentence is fit and appropriate in this case. In addition to *Sinclair* these cases include: the post-Friesen decisions of *R. v. Bahamonde*, 2022 ONSC 916 [Bahamonde] and *R. v. J.R.*, 2021 ONCJ 14 [J.R.], and the pre-Friesen decisions of *R. v. Ly*, 2019 ONCJ 120; *R. v. McFarlane*, 2018

MBCA 48; R. v. Brown, 2018 BCPC 260; R. v. McLean, 2016 SKCA 93; and R. v. Reynard, 2015 BCCA 455. The defence suggests that in several of these cases, circumstances "equally if not more heinous" than those at bar resulted in sentences commensurate with the range the defence proposes. The defence also submits that their proposed global sentence would be consistent with Friesen.

- [73] I have read and considered the pre-Friesen decisions provided to me. I find some of them instructive to the extent that they articulate positions similar to those expressed in Friesen regarding the appropriate judicial response to the harm and wrongfulness of sexual offences against children. However, the utility of these cases is inevitably tempered by the clear instruction in Friesen that sentences for child sexual offences were too low in the past and must increase: at para. 5. Therefore, sentencing cases that pre-date Friesen are of little assistance in my determination of a fit and proper sentence in this case.
- [74] I also reviewed the post-Friesen cases relied upon by the defence. I wish to address the applicability of these cases to the present circumstances at the outset.
- [75] First, the defence argues that Sinclair, whose facts I reviewed above, provides an example of equally repugnant sexual violence against children and should thus guide the imposition of a sentence in this case.
- [76] However, several significant factors distinguish Sinclair from the case at bar. Unlike Mr. Coban, Mr. Sinclair did not make good on his threats to widely distribute the explicit photo of his extortion victim. Mr. Sinclair never engaged in conduct akin to Mr. Coban's public distribution of child pornography when he sent images of Amanda Todd to her family, friends and school. Mr. Coban also used an image of Amanda with her breasts exposed as a publicly-viewable profile for the Austin Collins Facebook account, and publicly posted an image of Amanda with her breasts exposed on YouTube using the alias door1ordoor2. I find no conduct with such far-reaching consequence in Sinclair.
- [77] As well, Mr. Sinclair's moral culpability was (albeit only moderately) tempered by various disorders and cognitive defects (including intellectual disability disorder, autism spectrum disorder, and possible fetal alcohol syndrome), and the fact that he was an Indigenous offender to whom R. v. Gladue, [1999] 1 S.C.R. 688, 1999 CanLII 679 applied. These factors do not apply in the present case, suggesting that a greater sentence than the one imposed in Sinclair is called for in the circumstances at bar.
- [78] The defence also refers me to the post-Friesen case of Bahamonde, where the Ontario Superior Court of Justice imposed a 7.5 years sentence of imprisonment for numerous offences related to the sexual abuse of children, reduced to approximately 6.5 years' imprisonment after receiving credit for time already served. The offender in Bahamonde solicited sexual photos and videos from several victims online, engaged in harassing and threatening behaviour, and distributed child pornography to some of his victims. On one occasion, the offender travelled abroad to have sexual intercourse with one of his victims. When the victim terminated her relationship with the offender, he distributed a link to the

victim's family of an account on the file-sharing platform Dropbox containing sexually explicit images of the victim, and posted photos with the victim's information to a pornographic website. A search of the offender's home yielded more than 1,000 child pornographic materials, including a series of images depicting a child who appeared to be 3 years old being victimized by an adult. The offender also admitted to making surreptitious 'up-skirt' recordings, and failed to comply with his recognizance post-arrest.

- [79] The comparison of Bahamonde to this case is apt given the nexus of solicitation, possession, distribution, harassment, and threats present in the conduct of both offenders. Unlike this case, however, the offender in Bahamonde was not convicted of extortion, an offence central to Mr. Coban's criminal scheme. As well, the offender in Bahamonde was significantly younger than Mr. Coban (he was aged 20 or 21 when the offending began and 28 when sentenced); had a history of substance abuse for which he undertook rehabilitation; willingly and actively engaged in weekly therapy sessions following arrest; and entered guilty pleas on most of his charges. These distinguishing factors militate in favour of imposing a greater sentence in this case than the one imposed in Bahamonde.
- [80] Third, in J.R. the Ontario Court of Justice imposed a global sentence of 5 years' imprisonment for luring and extortion offences. The offender in that case victimized his own 11-year-old daughter, who was born as a result of the offender's sexual abuse of the victim's stepsister. The victim was in foster care at the time of the offending.
- [81] The offender secretly and in breach of strict court orders provided the victim a cellphone preloaded with the online messaging application Snapchat. He proceeded to solicit sexually explicit photos from the victim. He relied on both inducements and threats to back his demands for child pornographic materials. These included promising the victim electronics in exchange for photos and threatening to stop visiting the victim if she failed to comply with the offender's demands. The victim eventually "gave in" to [the offender's] continuous demands because she 'felt badly saying no to him': J.R. at para. 10. The victim repeatedly pleaded with the offender to stop asking for photos and identified the offender's behaviour as wrong.
- [82] As with Bahamonde, J.R. and the present case share some notable similarities. Both cases involved extortive conduct targeting a child in her early teens aimed at procuring child pornographic materials. In both cases, the offenders also made use of emotional inducements and threats to solicit sexually explicit materials.
- [83] However, several factors distinguish J.R. from the case at bar. Unlike J.R., where the offending period lasted several months, the offending in this case spanned multiple years. Moreover, the offender in J.R. was acquitted of possessing child pornography because of the temporary nature of image-sharing on Snapchat: J.R. at para. 14. The court acknowledged that the sentence imposed on the offender must reflect his acquittal of possession: J.R. at para. 58. Moreover, Mr. Coban threatened the distribution of child pornographic materials depicting Amanda Todd to her friends, family, and wider community. By contrast, the

threats in J.R. primarily concerned the offender ceasing to visit the victim, and the offender never distributed the materials to others. I note that Mr. Coban also made good on his threats on several occasions, whereas the offender in J.R., on the facts as presented in that case, seems to have maintained his (admittedly harmful) relationship to the victim until his arrest. Again, these salient differences collectively persuade me that a sentence greater than the one imposed in J.R. is required in this case.

The Governing Legal Principles

Principles of Sentencing

- [84] Sections 718 to 718.2 of the Code set out the fundamental principles and purposes to be considered by the courts in sentencing.
- [85] Section 718 of the Code provides that 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", with reference to six objectives. These objectives are: denunciation of unlawful conduct; deterring the offender and other persons from committing offences; separating offenders from society, where necessary; assisting in rehabilitating offenders; providing reparations for harm done to victims or to the community; and promoting a sense of responsibility in offenders and acknowledging the harm done to victims or to the community.
- [86] Pursuant to s. 718.01 of the Code, because the offences at bar involved the abuse of a person under the age of 18, I must give primary consideration to the objectives of denunciation and deterrence in sentencing Mr. Coban.
- [87] In all cases, pursuant to s. 718.1 of the Code, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: see Friesen at para. 30 and R. v. Parranto, 2021 SCC 46 at paras. 11-12.
- [88] As well, s. 718.2 of the Code sets out a number of specific principles that a court must take into consideration in sentencing. One important principle is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender: s. 718.2(a). Another subsection that applies in this case is s. 718.2(a)(ii.2), given that Amanda Todd was under the age of eighteen. As discussed below, s. 718.2(a)(iii) may also aggravate Mr. Coban's sentence if, in committing some of the offences, he abused a position of trust.[1]
- [89] Another important principle is parity of sentence, which requires the sentence imposed to be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: s. 718.2(b) of the Code. However, I am mindful that I am not to lose sight of the individualized nature of the assessment before me--an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: R. v. Nasogaluak, 2010 SCC 6 at para. 43.

- [90] Subsection 718.2(c) of the Code outlines what is referred to as the totality principle, which requires that, where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

Sentencing Sexual Offences Against Children After Friesen

- [91] In April 2020, the Supreme Court of Canada released new guidance on "how to impose sentences that fully reflect and give effect to the profound wrongfulness and harmfulness of sexual offences against children": Friesen at para. 1. The overarching message of Friesen for sentencing judges is set out at para. 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.

- [92] The Court explained at para. 50 that sentencing judges must fully appreciate the wrongfulness and the harms associated with child sexual offences:

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.

- [93] The facts in Friesen concerned the offences of sexual interference, invitation to sexual touching, sexual exploitation, incest, and sexual assault. However, the Court made it clear that the sentencing principles they outline have relevance to sentencing for other sexual offences against children, such as child luring, and that courts should draw upon the principles set out in Friesen when imposing sentences for other such offences: at para. 44.

- [94] Friesen detailed the many forms of harm that come from sexual offences against children--both in childhood and in adulthood--and underscored that the harms of child sexual offences "can be so profound that children are 'robbed of their youth and innocence'": at para. 80. The Court emphasized some of the long-term harms that victims of child sex offences can carry into adulthood, including that they are more likely to struggle with mental illness, suicidal ideation, and substance abuse: Friesen at para. 81.

- [95] Additionally, in sentencing for sexual violence against children, courts must focus their attention on not only physical harm, but also on emotional and psychological harm, the effect of which "may often be more pervasive and permanent" than that of any physical harm: Friesen at para. 56, citing *R. v. McCraw*, [1991] 3 S.C.R. 72, 1991 CanLII 29.

- [96] As well, the Court in Friesen instructed sentencing judges to not lose sight of the harms engendered by sexual violence against children to victims' families. In the Court's words:
- [63] The ripple effects of sexual violence against children can make the child's parents, caregivers, and family members secondary victims who also suffer profound harm as a result of the offence. Sexual violence can destroy parents and caregivers' trust in friends, family, and social institutions and leave them feeling powerless and guilty (R. v. C. (S.), 2019 ONCA 199, 145 O.R. (3d) 711, at para. 6; Rayo, at para. 39; D. (D.), at para. 13). The harm to parents' relationship with their children can also be profound. For instance, children can react to the sexual violence by shutting their parents out of their lives (Rafiq, at para. 40). Parents and caregivers may also bear the financial, personal, and emotional costs of helping their children recover and cope with emotional and behavioural challenges (see D. (D.), at paras. 11-13). In the words of one mother of a child victim, the sexual violence "has taken many years from my son's life and I know this will hurt me for the rest of my life" (D. (D.), at para. 11).
- [97] In sum, the sentence imposed for sexual offences against children must reflect the Court's findings in Friesen. It must reflect the contemporary understanding of sexual violence against children. It must recognize the wrongfulness and harmfulness of sexual violence against children and the life-altering harms to the victim's personal autonomy, bodily integrity, sexual integrity, dignity, and equality that often flow from sexual violence. In short, the sentence must be commensurate with the gravity of sexual offences against children. As noted in Friesen:
- [76] Courts must impose sentences that are commensurate with the gravity of sexual offences against children. 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 (see M. (C.A.), at para. 80; R. v. Morrissey, 2000 SCC 39, [2000] 2 S.C.R. 90, at para. 35). 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.
- [98] With these instructions in mind, the Court in Friesen indicated at para. 114 that "mid-single digit penitentiary terms for sexual offences against children are normal and ... upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances".

[99] Beginning at para. 121, the Court in Friesen provided guidance on the factors relevant to sentencing for sexual offences against children. While not an exhaustive list of factors to consider when determining a fit sentence, they are aimed at promoting "the uniform application of the law of sentencing": Friesen at para. 121. and R. v. Williams, 2020 BCCA 286 [Williams] at para. 20. In Williams, our Court of Appeal stated that the Friesen factors include:

- a) the offender's likelihood to reoffend;
- b) the offender's abuse of a position of trust or authority;
- c) the duration and frequency of sexual violence;
- d) the age of the victim; and
- e) the degree of physical interference.

[100] Both Williams (at para. 21) and Friesen (at paras. 148-154) make clear that a victim's participation in sexual offences against children is not a relevant consideration in sentencing, except as an aggravating factor where the participation results from grooming or a breach of trust.

Internet-based Sexual Offences Against Children

[101] Internet-based sexual offences against children have been repeatedly characterized as matters of serious concern by our courts. For example, in R. v. Morelli, 2010 SCC 8, Deschamps J. (dissenting, not on this point) emphasized the proliferation of child pornography as a result of new technologies:

[114] Internet and computer technologies have brought about tremendous changes in our lives. They facilitate the communication of information and the exchange of material of all kinds and forms, with both legal and illegal content, and in infinite quantities. No one can be unaware today that these technologies have accelerated the proliferation of child pornography because they make it easier to produce, distribute and access material in partial anonymity: Y. Akdeniz, Internet Child Pornography and the Law: National and International Responses (2008), at pp. 1-8. Not only do these technologies increase the availability of child pornography; they also raise new challenges, as the criminal law must be adapted to apply to the making, distribution, and possession of such material, while the resulting offences must be investigated in a manner consistent with fundamental rights.

[102] More recently, in Friesen, the court emphasized the pervasive role of technology in facilitating sexual offences against children:

[47] New technologies have enabled new forms of sexual violence against children and provided sexual offenders with new ways to access children. Social media provides sexual offenders "unprecedented access" to potential child victims (R. v. K.R.J., 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 102). The Internet both directly connects sexual offenders with child victims

and allows for indirect connections through the child's caregiver. Online child luring can be both a prelude to sexual assault and a way to induce or threaten children to perform sexual acts on camera (see *R. v. Woodward*, 2011 ONCA 610, 107 O.R. (3d) 81; *R. v. Rafiq*, 2015 ONCA 768, 342 O.A.C. 193). The Internet has also "accelerated the proliferation of child pornography" (*R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 114, per Deschamps J.).

- [48] Technology can make sexual offences against children qualitatively different too. For instance, online distribution of films or images depicting sexual violence against a child repeats the original sexual violence since the child has to live with the knowledge that others may be accessing the films or images, which may resurface in the child's life at any time (*R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, at para. 92; *R. v. S. (J.)*, 2018 ONCA 675, 142 O.R. (3d) 81, at para. 120).
- [103] In *Sinclair*, the Manitoba Court of Appeal reiterated these concerns and emphasized the seriousness of online child exploitation offences as follows:
- [60] in *Friesen*, the Supreme Court directed appellate courts and sentencing judges to bring "sentencing law into line with society's contemporary understanding of the nature and gravity of sexual violence against children" (at para 50). This is especially relevant with respect to social media. As the Supreme Court observed, the internet has opened a new window into easy access to children who can and do communicate with predators directly, "especially through child luring" (at para 94). Such easy access is apparent in this case, where the accused was able to access children from across the United States unimpeded.
- [75] The internet is a medium in which adults can engage in anonymous, low visibility and repeated contact with potentially vulnerable children. It can be a fertile breeding ground for the grooming and preparation associated with the sexual exploitation of children by adults (see *R v Alicandro*, 2009 ONCA 133 at para 36).
- [76] In the last decade, online child exploitation has exploded. In Canada, police-reported child luring incidents more than doubled between 2010 and 2017 and police-reported child pornography incidents more than tripled
- [104] Therefore, the sentence I impose must reflect a modern understanding of proportionality, in view of the seriousness with which we now perceive internet child exploitation offences (*Sinclair*) and sexual offences against children more generally (*Friesen*).

Application of the Sentencing Principles to the Present Case

- [105] I turn now to an application of the relevant legal principles to the particulars of this case, guided by the analytical framework established in *Friesen*. I begin with a consideration of the mitigating and aggravating factors.

Mitigating Factors

[106] At the time of the commission of these offences Mr. Coban did not have a criminal record. However, I agree with the Crown that given the nature of the circumstances and Mr. Coban's role, there are few compelling mitigating factors in this case.

[107] The defence says the letters of support demonstrate that Mr. Coban has a supportive family network to assist him during and after his imprisonment. In particular, I was advised Mr. Coban has had contact with his mother while incarcerated in the Netherlands via periodic Skype calls. Mr. Coban's mother also supports Mr. Coban financially and has provided him clothes and other necessities while in prison.

Aggravating Factors

[108] I find that there are several aggravating factors that must be considered when determining a fit sentence in this case:

1) Potential and Actual Harm to the Victim

[109] In many cases of sexual violence against children, it is "impossible to determine the nature and extent of harm that the victim will experience", because some of it will materialize after the sentencing, when the child becomes an adult: Friesen at para. 83. However, Amanda Todd will never become an adult. I cannot find on the evidence that Mr. Coban's offending was the dominant cause of Amanda's death, as suggested by the Crown. Nevertheless, I am satisfied that the calculated and repeated distress and disruption introduced by Mr. Coban to Amanda's life caused profound emotional and psychological harm that unquestionably contributed to her mental health challenges, substance use, and eventual suicide.

[110] To that end, I find unpersuasive the defence's submission that the "other traumatic events" that Amanda experienced during and subsequent to Mr. Coban's offending serve to temper the harm of his conduct. Per Friesen, sexual violence against children causes harm that is far-reaching and ongoing: at para. 86. I must view that harm with primacy in this sentencing, and nothing in Friesen or elsewhere suggests that I should consider other harms Amanda experienced in her life as attenuating the harms caused by Mr. Coban's offences.

[111] Friesen also instructs me that I am to consider the victim impact statements before the court, and especially those provided by Amanda's parents, as the "best evidence" of the harm that Amanda suffered: Friesen at para. 85. Although not a formal impact statement, Amanda's YouTube video evidences the helplessness, mental anguish, and social isolation that Amanda felt as a result of Mr. Coban's offending. Meanwhile, Amanda's parents' statements make clear that the harm that befell Amanda as a result of Mr. Coban's offending was at the most extreme end of the spectrum. As noted by the Crown, the serious impact of the offences on Amanda "was obvious to Mr. Coban and would have been obvious to anyone" at the time of the offending. Indeed, ruining Amanda's life was Mr. Coban's expressly stated

goal, and was sadly one that he achieved.

2) Degree of Responsibility of the Offender

[112] Like the offender in Sinclair, Mr. Coban displayed a "callous attitude in the chats [that] was indicative of a troubling degree of enjoyment out of the interaction": at para. 63. However, unlike the offender in Sinclair, where this callousness was mitigated--at least in part--by the offender's personal circumstances, there are no equivalent mitigating factors here. Mr. Coban deliberately took advantage of a vulnerable and innocent young girl. He set in motion a meticulously detailed, multi-pronged plan involving an arsenal of fake social media profiles. He went to significant lengths to obtain information about Amanda, including who her family members, teachers, and peers were, so he could maximize the number of people to whom he distributed the images and videos. He encouraged both adults and children to view the child pornography and then to shame and humiliate Amanda. Although his attempts to extort further child pornography from Amanda were ultimately unsuccessful, he persisted to torment her for years as she pleaded desperately with him to stop. He repeatedly expressed a desire to ruin her life. This pattern of offending shows careful premeditation and planning, and a complete and utter disregard for the extreme suffering he caused his victim. The offences were highly sophisticated and included using technology to portray himself as a young person. Mr. Coban's moral blameworthiness falls at the most extreme end of the spectrum.

3) Likelihood to Reoffend

[113] At the time of the commission of these offences, Mr. Coban did not have a criminal record. However, since his arrest in 2014 he has been convicted in the Netherlands of similar offences against numerous other child victims. These offences contemplated conduct that spanned multiple years prior to his arrest, evidencing an entrenched pattern of behaviour.

[114] In my view, Mr. Coban's actions involving both Amanda Todd and the offending of a similar nature against other child victims demonstrate that he poses a serious risk to society. This is an aggravating factor. I accept that Mr. Coban has been serving a sentence for very similar offences while these charges have been pending, and therefore may not have felt comfortable speaking about his offending behaviour. Yet there is nothing before me to indicate that he has any insight into his offending behaviour or to otherwise assuage my concerns that Mr. Coban continues to pose a significant risk to others.

4) Abuse of a Position of Trust or Authority

[115] By posing as an adolescent peer on more than one occasion, Mr. Coban attempted to build a relationship of trust with Amanda over the internet. He did so to learn personal information about her and convince her to perform sexual acts while on camera. As detailed above, Mr. Coban created the persona of a young female named kelseyrain2 to befriend Amanda over Skype and encourage her to "cam" with him. Similarly, he created the persona of a young male named Tomas Coco Pops to befriend Amanda and flatter her in an effort to gain her

trust. Although the relationship of trust was not a central feature of the offending, I am satisfied that it is nonetheless an aggravating factor. Indeed, the intention to form a trust-based relationship is central to the luring offence for which Mr. Coban was convicted. As noted in *R. v. Morrison*, 2019 SCC 15 [Morrison] at para. 197 (Abella J., dissenting in part, not on this point):

Internet child luring refers to the deliberate and methodical process in which a predator "aspire[s] to gain the trust of [the] targeted victims" online before attempting to "entice them into sexual activity, over the Internet or, still worse, in person" Predators use the anonymity of the Internet to contact and interact with children in ways that would not be possible in the real world.

- [116] I remain alive to the defence's submission that Mr. Coban's relationship with Amanda Todd through his kelseyrain2 and Tomas Coco Pops aliases did not involve the abuse of a position of trust as defined in *Poncelet* and elsewhere. The defence characterizes these aliases as "virtual strangers" to Amanda.
- [117] However, the defence's reliance on *Poncelet*--a case involving a real-life adult-child relationship--ignores the unique aspects of relationships formed by young persons online. Indeed, as the court observes in *Friesen*, in child luring cases an offender's grooming over the Internet can build a new relationship of trust despite the fact they are a complete stranger to their victim. It is unfortunately true that in the world of Amanda Todd and her young adolescent contemporaries, there often exists a naïve assumption that other users of the Internet are friends and hence can be trusted. It is precisely this naïveté that facilitated Mr. Coban's unprecedented access to his victim. The notion that a person with whom one regularly communicates remains a 'stranger' merely because such communication occurs exclusively online is fundamentally incongruent with young peoples' experience of online life. This is especially true for online interactions that are regular and enduring, like Amanda Todd's year-long and relatively frequent communication with Mr. Coban's kelseyrain2 Skype alias.
- [118] As well, in this case Mr. Coban's complex, unrelenting, and abusive apparatus targeting Amanda Todd played an important role in generating the exact vulnerability that made her particularly susceptible to an abuse of trust. Beset by numerous aggressive online aliases who threatened to 'ruin her life' by distributing explicit materials of her, Amanda was uniquely primed to be receptive to Mr. Coban's 'friendly' and 'supportive' online aliases. It is beyond dispute that Mr. Coban sought to abuse Amanda's particular vulnerability to trusting his friendly online aliases to support and escalate his offending conduct. This, in my view, is appropriately considered an aggravating factor in this sentencing.
- [119] In any event, even if the defence is right to suggest that no 'traditional' relationship of trust existed between Mr. Coban and Amanda Todd, the online grooming techniques that Mr. Coban employed to target Amanda Todd unquestionably aimed to generate a non-traditional, online-based form of trust: *R. v. Woodward*, 2011 ONCA 610 at paras. 41-43.

Furthermore, Friesen instructs me that grooming behaviour that does not exploit an existing or new relationship of trust is nonetheless to be considered an aggravating factor in its own right: Friesen at para. 125.

5) Duration and Frequency

[120] The offending lasted over two years--or, as the Crown explained, more than one eighth of the duration of Amanda's life. Mr. Coban made contact with Amanda frequently, using various personas and social media platforms, and his offending followed her wherever she went. Mr. Coban repeatedly emphasized that he would not stop. Amanda lived in constant fear of what Mr. Coban would do next. As noted in Friesen, "[e]ach further instance of sexual violence traumatizes the child victim anew and increases the likelihood that the risks of long-term harm will materialize. Each further instance shows a continued and renewed choice by the offender to continue to violently victimize children": at para. 133. The court's sentence must give effect to the "staggering" nature of the sexual violence in this case: Friesen at para. 133. I therefore find the persistent and unrelenting pursuit of Amanda Todd to be an aggravating factor.

6) Age of the Victim

[121] Amanda was only 12-15 years old at the time of these offences, and her young age made her particularly vulnerable to sexual violence. Sexual violence by adult men against adolescent girls is associated with a heightened risk of suicide and substance abuse: Friesen at para. 136. Mr. Coban was aware of--and intentionally exploited--Amanda's young age and associated vulnerability. This is an aggravating factor, as it is an aspect of each offence that exceeds the basic fulfilment of its elements. As noted in Sinclair, "the facts which constitute essential elements of an offence do not lose their relevance on sentencing": Sinclair at para. 36.

Deterrence, Denunciation, and Public Protection

[122] As reviewed above, I must consider denunciation and deterrence as the primary objectives for sentencing Mr. Coban: s. 718.01 of the Code. As well, my sentence must recognize and reflect the harm that sexual offences against children cause and their wrongfulness, and society's deepening and evolving understanding of their severity: Friesen at para. 74.

[123] Mr. Coban's heinous conduct calls for sharp judicial rebuke. Such relentless and callous exploitation of vulnerable children--made possible by a reliance on the shadowy, diabolical world of internet anonymity--will not be tolerated. Those who engage in devious, destructive, and predatory behaviours like Mr. Coban must know that they will be subject to severe sanctions. As Friesen tells us, mid-single digit penitentiary terms for sexual offences against children are normal and upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances: Friesen at para. 114.

- [124] Mr. Coban must also be personally deterred from engaging in similar conduct in the future. The meticulousness, sophistication, scope, and frequency of his offending demonstrate that his patterns of criminal behaviour are entrenched and enduring. In particular, his poor prospects for rehabilitation (as discussed below) lead me to believe that only a significant sanction of imprisonment will send a sufficient message to Mr. Coban that he cannot continue to commit acts of sexual violence against children.
- [125] Finally, in this case, protection of the public also demands that Mr. Coban be separated from society. Mr. Coban's actions revealed an utter disregard for the life and safety of his young victim, and in fact demonstrated that Mr. Coban enjoyed his victim's escalating distress. Mr. Coban also showed a willingness to expose innocent members of the community to harmful child pornography to further his abusive scheme. It is particularly troubling that Mr. Coban widely distributed child pornographic materials to Amanda Todd's peers, who were themselves children at the time of the offending. Mr. Coban is thus an offender who is significantly morally blameworthy and who presents a serious risk to the public.

Rehabilitation

- [126] While deterrence and denunciation are of paramount importance, I must also consider the principle of rehabilitation. The prospect of rehabilitation cannot be overlooked when crafting an appropriate sentence, but it is of secondary importance when dealing with the type of case before me. Mr. Coban has not cooperated with or shown interest in rehabilitative programs available to him while in custody. There is nothing before me to suggest that Mr. Coban has gained any insight into the offending conduct and I am not confident that rehabilitation is a viable option for him at this time. Rehabilitation is its most effective where the offender knows and appreciates the seriousness of their crime, and resolves to distance themselves from the conduct. These circumstances, on the record before me, are not present in this case.

Proportionality and Parity of Sentence

- [127] As stated earlier, the fundamental principle of sentencing--proportionality--requires Mr. Coban's sentence to be proportionate to the gravity of the offence and his degree of responsibility: Code, s. 718.1. In *R. v. Somers*, 2021 BCCA 205 [Somers], Griffin J.A. explained how Friesen influences the proportionality analysis for sexual offences against children:

- [10] Proportionality requires a modern understanding of the gravity of the offence in question. For example, Friesen dealt with sexual offences against children and called for greater recognition of the harm these offences cause. The Court's analysis is an example of how, over time, society may reach a greater understanding of the gravity of certain offences and the commensurate moral blameworthiness of the offender, calling for greater or lesser sentences than in the past.
- [128] The gravity of the offences at bar, and Mr. Coban's personal responsibility in the commission of the offences, fall squarely on the most severe end of the spectrum. First, Friesen at paras. 98 to 100 makes clear that the objective gravity of sexual offences against children has steadily increased over time, as evidenced primarily by the rising maximum sentences enacted by Parliament for such offences. As well, the subjective gravity of Mr. Coban's particular offences, with a view to the principle of proportionality, militate in favour of a sentence at the higher end of the spectrum. Mr. Coban's offending was relentless, enduring, purposely destructive and distressing, targeted a child only aged 12 when the abuse began, and collaterally impacted a wide swath of Amanda Todd's community.
- [129] A factor that further increases the gravity of the offences at bar is the ripple effect, described in Friesen at para. 63, that Mr. Coban's conduct had on Amanda Todd's family. Consistent with Friesen, Amanda's parents and sibling are to be considered "secondary victims who also suffer profound harm as a result of the offence": at para. 63. Prior failures by courts to account for these sorts of harms, among others, have resulted in "unreasonable underestimations of the gravity" of sexual offences against children: Friesen at para. 50. Carol, Norm and Christopher Todd's victim impact statements unfortunately make clear that the emotional distress they suffered and continue to suffer as a result of Mr. Coban's offending are particularly severe. Their experiences appropriately factor in my conclusion that Mr. Coban's offences are especially grave and warrant a substantial term of imprisonment.
- [130] Unlike the offender in Sinclair, the defence has provided no compelling factor that serves to reduce Mr. Coban's responsibility in committing these offences.
- [131] Additionally, pursuant to the principle of parity, the sentence imposed should be similar to sentences imposed on similar offenders for similar offences in similar circumstances: Code, s. 718.2(b). As I discussed earlier, counsel put a number of sentencing authorities before me and I have considered them. During submissions, counsel took me through some of these cases and drew my attention to their similarities to the present case and their distinguishing features.

- [132] However, I emphasize that my consideration of the pre-Friesen cases provided to me must be considered in light of the Court's comments in Friesen that prior precedents and sentencing ranges may no longer apply: Friesen at paras. 108-114. A possible danger in relying on these pre-Friesen cases is that they do not adequately account for developments in society's understanding of the impact of sexual violence upon children, which calls for higher sentences for these offences.
- [133] As well, I wish to re-iterate that the post-Friesen cases provided to me by defence counsel, while instructive, share some distinguishing features that militate in favour of the imposition of a greater sentence in this case. Neither Bahamonde nor J.R. involved anything akin to the expansive, technologically-sophisticated, and anonymous abusive apparatus employed by Mr. Coban to beset and extort Amanda Todd using numerous distinct aliases. As well--although in Bahamonde the offender did distribute child pornography to his victims and, on one occasion, to a victim's family--in neither J.R. nor Bahamonde did the offender, like Mr. Coban, publicly distribute child pornographic materials of their victims to wide swaths of the victims' communities. These shared distinguishing factors, along with these cases' individual distinguishing features reviewed above, convince me that a more severe sentence than the sentences imposed in J.R. and Bahamonde is called for in this case.

Concurrent vs. Consecutive Sentences

- [134] In sentencing Mr. Coban, I must not only impose a fit sentence for each of his offences, but also decide whether those individual sentences should run concurrent or consecutive to each other.
- [135] The general rule "is that offences that are so closely linked to each other as to constitute a single criminal adventure may, but are not required to, receive concurrent sentences, while all other offences are to receive consecutive sentences": Friesen at para. 155. I note, however, that the Court in Friesen declined to comprehensively analyze the appropriate use of consecutive and concurrent sentences, as the issue did not impact the outcome of the case and was not adequately argued by the parties: at para. 156.
- [136] To that end, existing authorities in British Columbia provide meaningful guidance on the imposition of concurrent or consecutive sentences in this case. For instance, as noted in Potts courts may consider such factors as "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or to the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes": at para. 89. However, even where there is a link between the offences, "consecutive sentences can be imposed when the offences committed protect different societal interests": R. v. Robertson, 2020 BCCA 65 at para. 91.

- [137] I am satisfied that within-indictment consecutive sentences are appropriate in this case, except with respect to the criminal harassment offence (Count 5), which should run concurrently with the extortion offence (Count 1). I find, and the parties agree, that Counts 5 and 1 both protect a person's privacy interests, their personal freedom, and their personal right to be free from harm. Oppositely, in my view, the charged offences of extortion, child luring, and possession of child pornography for distribution protect a distinct interest:
- a) Count 1: The offence of extortion aims to protect every person's freedom of choice from intimidation and interference: Friesen at para. 177.
 - b) Count 2: Child pornography offences were enacted to protect children--a vulnerable segment of society--from harm, including sexual violence and abuse: R. v. Sharpe, 2001 SCC 2 [Sharpe] at para. 169.
 - c) Count 4: The offence of child luring protects children from sexual exploitation over the internet by criminalizing communications that pave the way for such abuse: R. c. Rayo, 2018 QCCA 824 at para. 9.
- [138] Accordingly, I find that the sentences imposed for Counts 1, 2 and 4 should run consecutively.
- [139] I reject the defence's submission that Mr. Coban's sentence for child luring should run concurrently to Count 1, on the view that the majority of the luring messages in this case were also extortive. This submission ignores the conceptually distinct interests protected by the criminal prohibitions on extortion and child luring. It also fails to account for the non-coercive luring behaviour engaged by Mr. Coban through his non-aggressive aliases, including a year-long 'friendship' with Amanda Todd using the kelseyrain2 alias. Additionally, I impose these consecutive sentences with a view to ensuring that Mr. Coban does not enjoy a "free ride" for these offences, as articulated in Sinclair: at para. 73.
- [140] Finally, I also find that Mr. Coban's Canadian sentence should run consecutively to the Dutch sentence he is presently serving. I address this finding in greater detail below.

Totality of Sentence

- [141] Having found that multiple sentences in this case should run consecutively, I must turn my mind to the totality principle.
- [142] The totality principle dictates that where an offender is convicted of more than one offence and given consecutive sentences for their offences, the sentencing judge must avoid imposing an aggregate sentence that is unduly long or harsh, that exceeds the offender's overall culpability, or that is so "crushing" as to not be in keeping with the offender's record and prospects": Somers, para. 13. In R. v. Li, 2009 BCCA 85 [Li], the court recommended a two-stage approach for sentencing an offender convicted of multiple offences:

- [28] The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence. See *R. v. P.P.H.*, 2003 BCCA 591.
- [143] Per the comments in *Li*, I will now determine the appropriate sentence for each offence. I will then consider the application of the totality principle to the discrete sentences I impose below.

Application of the Legal Principles to the Offences

Count 1: Extortion

- [144] For Count 1, the Crown proposes a sentence of 10 years, reduced to 6 years applying the totality principle. The defence proposes that the sentence for Count 1 should form part of an overall global sentence of 2 years' imprisonment.
- [145] In addition to the aggravating factors discussed above, I consider the gravity of the extortion offence to be particularly aggravating. The short-hand for the conduct at issue in this case is "sextortion": *McFarlane* at para. 4. Sextortion interferes with the victim's freedom of choice over their sexual integrity, and it is a form of sexual violence: *McFarlane* at para. 4. In *McFarlane*, the court said this about the gravity of sextortion offences:
- [19] In terms of proportionality, the gravity of the extortion offence was serious. Extortion is punishable by up to life imprisonment. For good reason, extortionists have been treated harshly by the courts for centuries. It is also important to appreciate that sextortion is a form of sexual violence even though it occurs through the medium of the internet. As with physical abuse, a victim's freedom of choice over his or her sexual integrity is violated. The long-term psychological harm to a victim, as was seen here, closely resembles what happens in a case of physical sexual assault (see *R v Innes*, 2008 ABCA 129 at paras 7, 11; and *R v NG et al*, 2015 MBCA 81 at para 33). Finally, it is difficult to hold such offenders accountable because the crime is remotely committed and the nature of the internet provides predators with a degree of anonymity; in this case, it took the efforts of five different law-enforcement agencies in two countries over many months to solve the case.
- [146] As noted in *Friesen*, sexual violence against children is particularly wrongful because it turns on its head "one of the most fundamental values of Canadian society"--the protection of children: at para. 65. Sentences for sextortion offences against children must necessarily reflect "society's deepening and evolving understanding of [the] severity" of sexual offences against children: *Friesen* at para. 74.

- [147] Other aggravating factors for this offence involve the nature of the threats in this case. These include Mr. Coban's express goal of "fuck[ing] up" or ruining Amanda's life, as well as the relentless and incessant nature of the threats, which continued despite Mr. Coban's awareness of the immense toll the offending was having on his victim.
- [148] Considering all of these factors, I find the appropriate sentence for the extortion offence is 10 years imprisonment.

Counts 2 and 3: Child Pornography Offences

- [149] I agree that a judicial stay should be entered on Count 3 pursuant to Kienapple. For Count 2, the Crown proposes a sentence of 3 years consecutive (reduced to 1 year for totality). Again, the defence proposes that the sentence for Count 2 should form part of a global sentence of 2 years' imprisonment.
- [150] The harms of child pornography offences are well-known. In Sharpe, L'Heureux-Dubé, Gonthier and Bastarache JJ., concurring, emphasized that the objective of s. 163.1 is the protection of children:
- 169 Section 163.1 was enacted to protect children. Because of their physical, mental, and emotional immaturity, children are one of the most vulnerable groups in society, particularly with regard to sexual violence. Child pornography plays a role in the abuse of children, exploiting the extreme vulnerability of children. Pornography that depicts real children is particularly noxious because it creates a permanent record of abuse and exploitation. An analysis of the vulnerability of the group and their subjective fears supports Parliament's decision to prohibit child pornography.
- [151] The online distribution of the child pornography is an aggravating factor. As noted in Friesen, "online distribution of films or images depicting sexual violence against a child repeats the original sexual violence since the child has to live with the knowledge that others may be accessing the films or images, which may resurface in the child's life at any time": at para. 48.
- [152] In this case, Mr. Coban went to great lengths to ensure he made the images and video of Amanda widely available; he learned the names of her friends, family, schoolmates, and teachers, and made it clear that the child pornography would follow her wherever she went, including when she transferred schools.
- [153] The harms envisioned at paras. 79-86 of Friesen thus materialized in this case, in the worst possible way, for Amanda Todd. She could not escape the images or video--it was a neverending story. This callous means of distribution is a seriously aggravating factor.
- [154] Similarly, it is an aggravating factor that Mr. Coban actually distributed the materials, and that he distributed them widely. Indeed, Mr. Coban deliberately employed different types of aliases to maximize the distribution of the child pornographic materials in this case. Specifically, Mr. Coban used aliases posing as concerned adults when distributing materials

of Amanda to her family and school administrators, but posed as a fellow teenager when distributing materials to Amanda's school peers. I find Mr. Coban did so because he knew (or assumed) that adults would be more receptive to messages from other 'concerned' adults (and thus more likely to open the links Mr. Coban distributed), and oppositely that teenagers would be more receptive to messages from their peers. This pattern of conduct, aimed at ensuring the widest distribution possible of the harmful child pornography Mr. Coban possessed, is similarly aggravating.

[155] Finally, I agree with the Crown that the purpose for Mr. Coban's possession and distribution of the pornography--namely, to cause his victim immense suffering--is also exceptionally aggravating.

[156] In my view, the appropriate sentence for the possession of child pornography for the purpose of distribution is 3 years imprisonment.

Count 4: Child Luring

[157] At the time of the commission of this offence, the maximum penalty for child luring was 10 years. The Crown submits a sentence of 10 years is appropriate, reduced to 5 years consecutive given the totality principle. The defence proposes that the sentence for Count 4 should form part of a global sentence of 2 years' imprisonment.

[158] Child luring is an insidious offence that is inherently predatory; it preys on the trust and vulnerability of young people like Amanda Todd. Mr. Coban engaged in multiple forms of luring. For example, he posed as a young woman (kelseyrain2) in order to cultivate a friendship with Amanda, so he could persuade her to perform sexual acts on camera. He did so in a highly sophisticated, meticulous, and predatory way, making efforts to appear on video as if he was a young woman and to change his voice to sound like a young woman. Around the same time, he posed as her peer and sought to gain her trust using the Tomas Coco Pops account. Mr. Coban used the anonymity provided by cyberspace to prey on Amanda "in ways that would not be possible in the real world": Morrison at para. 197. He used the nefarious tools at his disposal to launch an insidious, highly-sophisticated, and multi-pronged luring attack on a vulnerable young girl.

[159] In my view a sentence of 6 years imprisonment is appropriate.

Count 5: Criminal Harassment

[160] The Crown submits 6 years is a fit sentence, due to the particularly aggravating circumstances of this case. The defence submits that the sentence for Count 5 should form part of a global 2-year sentence. As previously discussed, both parties agree, and I accept, that the sentence on this count should be concurrent with the sentence for extortion.

- [161] Mr. Coban engaged in a sophisticated and sustained campaign to destroy the life of Amanda Todd, a vulnerable adolescent girl. He repeatedly sent threatening messages to Amanda using various personas to insulate himself from detection. When he did not receive the response he wanted, he escalated his efforts. He repeatedly sent links to pornographic images and videos of Amanda to her family members, friends, as well as staff and students at her schools.
- [162] I agree with the Crown that a sentence of 6 years concurrent is a fit and proper sentence for this relentless campaign of harassing behaviour.

Adjustments to Reflect the Totality Principle

- [163] Having imposed multiple consecutive sentences in this case, I will now consider whether adjustments are necessary in light of the totality principle.
- [164] In *Sinclair, Steel J.A.* varied the offender's sentence of incarceration, increasing it from five to eight years. She concluded that the other offences the accused was sentenced to, in addition to the child luring, were "extremely serious, if not equally serious to the luring charge" and the offender "was not entitled to a free ride with respect to those offences": at para. 73. She emphasized that reductions for totality are "not automatic" and are rather a "'last look' to ensure that the cumulative sentence does not exceed the offender's overall culpability. The higher the degree of moral culpability, the less likely the sentence will be reduced": at para. 74.
- [165] I have considered the comments from *Sinclair* and *Friesen* in determining how to apply the totality principle to the sentence I impose. I am unpersuaded by the Crown's proposed approach to totality in this case--namely, imposing severe consecutive sanctions at the outset and effectively halving them so as to conform with totality principles. I believe that more modest reductions for totality are warranted so as not to undermine the paramount objectives of denouncing and deterring Mr. Coban's conduct.
- [166] To that end, I recognize that a global within-indictment sentence of 19 years' imprisonment--being the sum of the sentences I imposed for each offence above--would be crushing and run afoul of the totality principle. Accordingly, I elect to reduce Mr. Coban's global sentence. I will detail the specific reductions for each offence below.
- [167] I find that this term of incarceration appropriately conforms with the totality principle while satisfying the various objectives that animated the independent sentences I have reached for the offences in this case. It also conforms with the comments in *Friesen*, referred to above, that in the context of sexual violence against children, "double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances": at para. 114.

- [168] Furthermore, I decline to make Mr. Coban's Canadian sentence concurrent with his Dutch sentence. I am of the view that reducing his Canadian sentence by approximately two additional years would not be necessary under the totality principle and only serve to undermine the objectives and principles that I have considered in crafting a fit sentence. As well, per Sinclair, "[c]oncurrent sentences are rarely appropriate where there are separate victims of sexual abuse, each of whom has suffered an individual harm": at para. 48. A similar proposition has been expressed by our and other appellate courts in various contexts: e.g., *R. v. Campbell*, 2022 NSCA 29 at paras. 34-35 and *R. v. Berry*, 2014 BCCA 7 at para. 53. Mr. Coban's Canadian and Dutch offences targeted their own distinct victims and generated their own distinct harms, militating in favour of a consecutive sentence.
- [169] Having made the Dutch and Canadian sentences consecutive, I agree with the defence that I must now turn my mind to the application of totality outside of the indictment before me.
- [170] However, I am not persuaded by the defence's reliance on MacArthur or Potts. MacArthur is not binding on me, and both it and Potts involved offences that are materially different from those at bar. Namely, neither MacArthur nor Potts concerned sexual offences against children. In MacArthur, the offender was sentenced for offences related to an armed robbery and an assault causing bodily harm. Similarly, in Potts, the offender received sentences for weapons-related and drug-related offences. The uniquely harmful nature of sexual offences against children, as made clear in Friesen, calls for a distinct approach to sentencing, including in the context of totality.
- [171] In particular, I find it inappropriate to provide Mr. Coban further reductions in the name of totality with respect to his Dutch sentence, as I am of the view that doing so would amount to giving him a "free ride" for offending that targeted and harmed distinct victims: Sinclair at para. 73. As stated in *R. v. Johnson*, 2012 ONCA 339 [Johnson], in the context of adjustments for totality in light of a prior and ongoing sentence:
- [23] The system must be seen to be fair and rational - both to the offender and the community - and its integrity must be preserved. Just as a sentence cannot be unduly harsh and excessive, neither can it be overly lenient or unresponsive to other purposes and principles that underpin the sentencing regime. In this sense, an offender such as the appellant ought not to be seen to be reaping benefits from his previous serious criminal misconduct.
- [172] To be clear, I have accounted for Mr. Coban's Dutch sentences in the sentence I impose. Yet, informed by appellate decisions across Canada, I have only considered the unexpired portion of Mr. Coban's Dutch sentence, being approximately two years' imprisonment: see *R. v. Roberts*, 2019 NLCA 43; *R. v. Park*, 2016 MBCA 107 [Park]; and Johnson. As stated in Park:

- [101] The jurisprudence confirms that, in applying the totality principle, the court can and should look to the unexpired sentence still to be served by the accused, but only to the unexpired portion. The unexpired portion of a prior sentence can address some of the public protection and rehabilitation concerns of the sentencing court with respect to an offender being sentenced for a new offence.
- [173] I note that Mr. Coban's Dutch sentence arguably falls outside the ambit of the rationale expressed in *Park*. Namely, when the court in *Park* advises that a prior unexpired sentence may address the same concerns animating the imposition of a subsequent sentence, it seems to assume that the same sentencing objectives and principles guide the imposition of both sentences. This is certainly true for Canadian courts, but there is an insufficient evidentiary basis before me to suggest that Canadian and Dutch courts share a similar sentencing regime.
- [174] However, even if I assume that the Dutch and Canadian sentencing regimes are similar, the fact that Mr. Coban has been serving his Dutch sentence for more than 5 years further distinguishes the present case from *Potts* and *MacArthur*. In both of those cases, the distinct sentences that were said to impact the court's totality analysis were imposed in very close proximity to each other. In *MacArthur*, the sentences were imposed one day apart, and in *Potts* they were imposed a few months apart. Such proximity, which is not present here, makes more compelling the view that a prior sentence imposed in distinct proceedings should effectively be viewed as an addition to a newly-imposed sentence for the purposes of totality.
- [175] As well, I emphasize that, although the Dutch sentences are an appropriate consideration in this case, my role in this sentencing is, ultimately, to craft a just and fit sentence for Mr. Coban's Canadian offending as guided by applicable Canadian sentencing law. I believe the sentence I impose on Mr. Coban, to be served consecutively to the unexpired two years remaining in Mr. Coban's Dutch sentence, fits that criteria.
- [176] Finally, I am aware that the global sentence I impose exceeds the sentence sought by the Crown, after accounting for totality. However, the sentences that I consider fit and appropriate for each of Mr. Coban's offences do not, cumulatively, exceed the Crown's submissions. It is only in the exercise of my discretion with respect to totality, and in particular my departure from the Crown's approach to totality for the reasons described above, that Mr. Coban's global sentence exceeds the one sought by the Crown. Indeed, during the sentencing hearing, I advised counsel that I was not inclined to adopt as generous an application of the totality assessment as the Crown proposed. In any event, I note that our Court of Appeal recently confirmed that it is not necessary for a sentencing judge to advise counsel of an intention to impose a sentence outside the range sought by either party: *R. v. Nahanee*, 2021 BCCA 13 at para. 46, leave to appeal to SCC granted, 39599 (8 July 2021), appeal heard 16 March 2022, citing *R. v. R.R.B.*, 2013 BCCA 224.

Disposition

[177] Crafting the appropriate sentence is always a difficult exercise. It is particularly difficult in cases like this one, where the harm caused by the offending is so profound that no sentence could ever come close to repairing it. In every case, sentencing involves a careful examination of the offender's personal circumstances together with the circumstances of the offence, the impact on the community, the case law and its application to the facts of the case, and the principles of sentencing.

[178] Balancing all of the relevant factors, I am of the view that a global sentence of 13 years is a proportionate, fit, and proper sentence. This sentence serves to denounce Mr. Coban's conduct and to deter him and others from engaging in such egregious conduct in the future.

[179] Mr. Coban, please stand.

[180] Following a finding of guilt by the jury on all five counts on the indictment, I am formally entering convictions on Counts 1, 2, 4 and 5. I am entering a judicial stay of proceedings on Count 3 (possession of child pornography) pursuant to the Kienapple principle.

[181] The sentence I impose is as follows:

1. On Count 1 of the Indictment, the extortion of Amanda Todd, I sentence you to a period of incarceration of 8 years.
2. On Count 2 of the Indictment, possession of child pornography for the purpose of distribution, I sentence you to a period of incarceration of 1 year, to run consecutively to the sentence imposed on Count 1.
3. On Count 4 of the Indictment, child luring, I sentence you to a period of incarceration of 4 years, to run consecutive to the sentence imposed on Count 1.
4. On Count 5 of the Indictment, criminal harassment, I sentence you to a period of incarceration of 6 years, to run concurrent with the sentence imposed on Count 1.

[182] Therefore, your total global sentence is 13 years imprisonment.

[183] This sentence is to run consecutively to the sentence you are presently serving for your convictions in the Netherlands.

[184] You may sit down Mr. Coban.

[185] I am also imposing the following ancillary orders:

1. Pursuant to s. 487.051(1)(a) of the Code, an order in Form 5.03 authorizing the taking of samples of bodily substances from Mr. Coban for the purposes of forensic DNA analysis and inclusion in the national DNA databank.

2. Pursuant to ss. 490.012(1) and 490.013(2.1) of the Code, an order requiring Mr. Coban to comply for life with the provisions of the Sex Offender Information Registration Act, S.C. 2004, c. 10.
3. Pursuant to s. 109(1)(a) and s. 109(3) of the Code, a firearms prohibition for life.
4. Pursuant to s. 109(2)(a) of the Code, a lifetime prohibition from possessing any firearm, any cross-bow, restricted weapon, ammunition, and explosive substance. Pursuant to s. 109(2)(b) of the Code, a mandatory prohibition from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
5. Pursuant to s. 161(1)(d) of the Code, an order prohibiting you from using the Internet or other digital network to: (a) access any social media sites, social networks, Internet discussion forums or maintain a personal profile on any such service; and (b) communicate or attempt to communicate with any person you know to be or who reasonably appears or represents themselves to be under the age of 18 years, unless a member of your family. This prohibition, pursuant to s. 161(2)(b), shall commence on the date on which you are released from imprisonment for a period of 15 years.
6. Pursuant to s. 737(1) of the Code, an order that you pay a victim fine surcharge in the amount of \$100 per count. Further, I exercise my discretion to make the victim fine surcharge payable forthwith. Acknowledging no payment, I will impose four days in default of payment of the surcharge to be served concurrently with the sentence I impose, with no warrant of committal and no time to pay.
7. Pursuant to s. 83(2) of the Extradition Act, an order that the warrant of committal state that Mr. Coban is to be committed to custody to serve the sentence immediately on his final extradition to Canada.
8. Pursuant to s. 743.2 of the Code, an order that a copy of these Reasons for Sentence be forwarded to the Correctional Service of Canada.

Conclusion

- [186] Amanda Todd wanted her voice to be heard. It was heard during this sentencing hearing, through her own words and the words of those who knew and loved her. We heard about the incredible torment she suffered and we heard her cautionary tale--her warning to other children and their families--about what lurks in the darkest corners of the internet.
- [187] This case illustrated that internet-based sexual offences against children have no geographic boundaries: Internet predators are cloaked in anonymity and capable of offending anywhere in the world with the click of a button. With a few more clicks, they can sign up for multiple social media profiles under false names, change their voice to sound like someone else, and play fake "live-stream" videos that can enable an adult man to appear, on video, to be a young woman. Amanda's tragic story, and all of the evidence marshalled in this case, should serve as a stark warning to youth on the internet that

internet appearances can be deceiving. As noted in Sinclair:

[75] The internet is a medium in which adults can engage in anonymous, low visibility and repeated contact with potentially vulnerable children. It can be a fertile breeding ground for the grooming and preparation associated with the sexual exploitation of children by adults

[188] Finally, before we adjourn, I wish to express my sincere appreciation to all counsel for your professionalism and assistance throughout this very difficult case.

[189] Thank you. We will now adjourn.

"Devlin J."

[1] On its face, s. 718.2(a)(iii.1) of the Code should also apply to aggravate Mr. Coban's sentence. However, Parliament introduced s. 718.2(a)(iii.1) through the Protecting Canada's Seniors Act, S.C. 2012, c. 29, with the provision coming into force on January 13, 2013 (i.e., after Mr. Coban's offending). Accordingly, it cannot be considered in the present case.

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