

CANADA / JUDGMENT

R. v. Gaglardi

2023 BCSC 96

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2023 BCSC 96 R. v. Gaglardi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gaglardi,

2023 BCSC 96

Date: 20230123

Docket: X083323

Registry: New Westminster

Between:

Rex

And:

Raymond Howard Gaglardi

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Before: The Honourable Mr. Justice Riley

Oral Reasons for Sentence

Counsel for the Crown:

J.L. Fogel

A.N. Bultz

Counsel for the Defendant:

P.A. Riddell, K.C.

Place and Date of Hearing:

New Westminster, B.C.

December 14-15, 2022

Place and Date of Judgment:

New Westminster, B.C.

January 23, 2023

Introduction

[1] The offender Raymond Howard Gaglardi is a 78-year-old man, before the court for sentencing in relation to a series of sexual offences, committed over a span of more than 40 years commencing in 1971. There were 11 victims, all males, who were between 10 and 30 years old when Mr. Gaglardi committed the offences against them. All of the victims were much younger than Mr. Gaglardi. In each instance, Mr. Gaglardi took advantage of a position of trust, exploited the vulnerability of the victim, and touched the victim in a sexual manner. Many of the victims suffered substantial and prolonged impacts as a result of Mr. Gaglardi's offending behaviour.

Overview of the Offences

- [2] Following a three week judge alone trial, I found Mr. Gaglardi guilty on 13 counts. I subsequently entered conditional stays under the rule against multiple convictions for offences arising from the same act or delict in respect of two of the counts. In the result, Mr. Gaglardi is before the court for sentencing on 11 counts, each involving a separate victim.
- [3] The offences can be broken down into two separate groups.
- [4] The first group of offences took place between 1971 and 1981, during which time Mr. Gaglardi was associated with the Glad Tidings Temple in Vancouver. Each of the five victims knew and interacted with Mr. Gaglardi through his association with Glad Tidings, or its affiliated school called Temple Academy, or the church's summer youth camp. Among other things, Mr. Gaglardi was an "ordained counsellor" at the church, the director of the church's sound and productions department, a teacher and counsellor at Temple Academy, and an organizer or supervisor at the church's summer camp. The victims were all males, between 10 and 17 at the time of the incidents, and Mr. Gaglardi was between 25 and 35 years old. In each case Mr. Gaglardi touched the victim in a sexual manner, in circumstances where the victim did not consent, consented on false pretences, or consented based on Mr. Gaglardi's exploitation of an authority or trust relationship.

- [5] The second group of offences took place between 1993 and 2015, during which time Mr. Gaglardi was associated with the Hillside Community Church in Coquitlam. All but one of the six victims came to know Mr. Gaglardi through his association with Hillside. Many of the victims were also clients of Mr. Gaglardi's counselling, mentorship, and holistic natural health practice. The victims were all males, between 15 and 30 years old at the time of the offences, and Mr. Gaglardi was much older. In each case, Mr. Gaglardi touched the victim in a sexual manner, in circumstances where the victim did not consent, consented on false pretenses, or consented based on Mr. Gaglardi's exploitation of a trust relationship.

Particulars of the Offences, and Victim Impacts

Vancouver Counts

Count 3

- [6] On count 3, I found Mr. Gaglardi guilty of indecent assault against RF, contrary to former s. 156 of the Criminal Code. This count comprises three incidents between 1 October 1971 and 30 December 1974, during which time RF was 14 to 15 years old. In the first two incidents, Mr. Gaglardi used his hands to touch RF's genitals, while RF's pants and underwear were down, ostensibly to check for venereal disease. These incidents occurred in Mr. Gaglardi's office at the Glad Tidings church in Vancouver. In the third incident, Mr. Gaglardi once again touched RF's genitals, while RF's shorts and underwear were down, ostensibly to check for injuries after RF had cut his knee during a baseball game, at the Glad Tidings summer camp near Sechelt.
- [7] In his trial testimony, RF explained that when he told his parents what had happened to him, his mother believed him but his father did not. This caused a rift in the family. RF's father basically disowned him, I infer out of loyalty to Glad Tidings. Shortly after turning 16, RF moved out of the family home and went to northern British Columbia for work. He agreed with the suggestion that what happened to him at Glad Tidings was the cause of his leaving home at such a young age. He testified that it "pretty much set [his] whole life on a different path".
- [8] In his victim impact statement, RF added that after some 50 years of suppressing what happened, shoving it to the back of his mind, he now realizes the effect that Mr. Gaglardi's abuse has had on him. He repeated how his father disowned him for causing disgrace to the family. Others in the church turned their back on him. Mr. Gaglardi's abuse caused RF to suffer feelings of self loathing and inadequacy. RF believes that his personal relationships have suffered as a result. RF concluded his victim impact statement by stating that his life was sent down a path of concealment, denial and hate by Mr. Gaglardi's actions. He has carried the emotional scars for some 50 years, always wondering why no one listened or took his complaints seriously.

Count 5

- [9] On count 5, I found Mr. Gaglardi guilty of indecent assault against GP, contrary to former s. 156 of the Criminal Code, in relation to an incident that occurred some time between 14 July 1975 and 14 July 1977. GP was 10 or 11 years old at the time. Mr. Gaglardi slipped his hand into GP's swimming trunks and touched his penis, at a swimming pool in Mr. Gaglardi's condo building in Burnaby, on an occasion when GP was sleeping over at Mr. Gaglardi's residence.
- [10] In his trial testimony, GP recounted that he had a difficult family situation with a history of violence leading up to the divorce of his parents. After the divorce, GP had no contact with his father. GP's family attended Glad Tidings, and Mr. Gaglardi took on a role as a sort of "father figure" to GP. GP believed that Mr. Gaglardi was a psychologist or doctor of psychology.
- [11] When contacted by Ms. Sidhu, the author of the pre-sentence report, in anticipation of sentencing, GP had nothing further to say. I will add, from the Court's perspective, that based upon his circumstances at the time of the offence, GP was a vulnerable boy and Mr. Gaglardi clearly took advantage of that vulnerability and abused his position of trust.

Count 6

- [12] On count 6, Mr. Gaglardi stands convicted of indecent assault against RM, contrary to former s. 156 of the Criminal Code. This offence relates to an incident that took place some time between 1 January 1977 and 31 December 1977, when RM was 12 years old. Mr. Gaglardi conducted a nude examination of RM's entire body, using a pen as a purported sensor or electrical feedback device, ostensibly as a means of assessing RM's muscular development. In the course of doing so, Mr. Gaglardi touched RM's genitals with the pen. This incident took place in Mr. Gaglardi's office at the Glad Tidings church.
- [13] Referring back to RM's evidence at trial, he testified that he had "behavioural problems" and he was always getting in trouble in school. From time to time when he acted up, he was sent to see Mr. Gaglardi, apparently for some kind of guidance counselling or discipline. RM recalled that Mr. Gaglardi was always pleasant with him and never used violence or physical discipline, unlike some of the others involved in running the school. The offence occurred in a context when RM went to see Mr. Gaglardi for advice about his muscular development. RM wanted to ask Mr. Gaglardi about weightlifting. RM testified that he found the touching incident embarrassing and shameful. He was a shy, skinny kid who did not even like swimming without a t-shirt. Even as a 12-year-old, RM thought what Mr. Gaglardi said about the pen as a feedback device was "bs" but he went along with it. He trusted Mr. Gaglardi, because he was associated with the church, and because he had an education as some kind of a doctor. RM said that Mr. Gaglardi's conduct was inappropriate and "he needs to face up to it".

- [14] The author of the pre-sentence report was unable to reach RM for further comment in advance of sentencing.

Count 8

- [15] On count 8, Mr. Gaglardi stands convicted of indecent assault against DP, contrary to former s. 156 of the Criminal Code. This offence relates to an incident that took place some time between 1 January 1977 and 31 December 1978. DP was 17 years old at the time. Mr. Gaglardi masturbated DP, ostensibly as part of a human sexuality experiment or study, in the bedroom of Mr. Gaglardi's residence in Burnaby.
- [16] In his trial testimony, DP explained that prior to the incident he trusted Mr. Gaglardi and felt that he was a professional because he had a PhD. He believed Mr. Gaglardi had a genuine interest in human sexuality. When he agreed to participate in what Mr. Gaglardi told him was supposed to be a research project he had no idea that Mr. Gaglardi would do what he ended up doing. After the incident he was extremely embarrassed and just wanted to forget it.
- [17] DP told Ms. Sidhu, the author of the pre-sentence report, that Mr. Gaglardi's conduct made him feel dirty. At the time of the offence he had no sexual experience and Mr. Gaglardi introduced him to pornography. DP says that Mr. Gaglardi's conduct has had a profound negative impact on many aspects of his life, including difficulty in forming and maintaining relationships. DP has struggled with his faith and has avoided interacting with people associated with the church. Mr. Gaglardi's conduct caused him to be mistrustful of other people. DP continues to struggle with the emotional scars of what Mr. Gaglardi did to him. He regards Mr. Gaglardi as a sexual predator. He feels that Mr. Gaglardi took advantage of vulnerable teenagers, causing rifts in their families and their faith.

Count 10

- [18] On count 10, I found Mr. Gaglardi guilty of indecent assault against KH, contrary to former s. 156 of the Criminal Code. This offence pertains to two incidents that occurred some time between 1 January 1979 and 1 July 1981, when KH was between 13 and 15 years old. In the first incident, Mr. Gaglardi touched KH's penis while KH was naked in a bathtub at Mr. Gaglardi's residence, ostensibly to show KH how to clean it. In the second incident, Mr. Gaglardi used some kind of electrical device to touch or stimulate KH's penis, ostensibly to measure electrical flow as a means of assessing KH's counselling needs, in a bedroom at Mr. Gaglardi's residence.
- [19] In his victim impact statement, KH states that at the time of this offence, his parents had divorced, and he lacked self-esteem and confidence. He felt that he was "easy prey" for Mr. Gaglardi. KH explains "Pretending to care about my emotional, physical and spiritual well being, only to betray that trust, set in motion a life filled with mistrust, anger, and most of all a fear of rejection". KH goes on to explain the impacts on his life. He has had trouble in his

personal relationships due to a general reluctance to place his trust in others, including his close relatives. KH emphasizes that despite this, he does not allow what Mr. Gaglardi did to him to define him or the person he has become. KH says it is his choice to forgive Mr. Gaglardi, but this does not mean KH approves of what happened to him or that there should be no consequences for it.

Coquitlam Counts

Count 12

- [20] On count 12, Mr. Gaglardi stands convicted of sexual assault of ML contrary to former s. 271(1) of the Criminal Code. This offence comprises three separate instances between 3 January 1993 and 2 January 1996, all of which occurred at some point after ML's 18th birthday. Mr. Gaglardi was around 50 years old. In one instance, Mr. Gaglardi used some kind of stimulation device to cause ML to ejaculate, ostensibly to collect a semen sample for some kind of testing. In the other two instances, Mr. Gaglardi performed internal prostate stimulation on ML, ostensibly as a means of releasing emotion or anxiety. All three events occurred in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.
- [21] In his evidence at trial, ML testified that he went to see Mr. Gaglardi for some form of counselling to deal with a severe marijuana dependency, when he was 18 years old, after an incident in which he got into an altercation with a roommate and was evicted from his apartment. He felt that his life had become unmanageable, and sought help from Mr. Gaglardi in dealing with his drug dependency. ML testified that he trusted Mr. Gaglardi because of his position in the church, his relationship with ML's parents, and presentation as a kind, caring, loving person, interested in helping ML with his issues. Mr. Gaglardi led him to believe that the procedures he performed were for his health. But for that, he would never have consented or allowed Mr. Gaglardi to do what he did.
- [22] In speaking with Ms. Sidhu in preparation of the pre-sentence report, ML alluded to the impact that Mr. Gaglardi's criminal conduct has had on his life and the lives of other victims. ML's personal perspective is that he does not want to waste any more time thinking about Mr. Gaglardi or giving him space in his mind.

Count 13

- [23] On count 13, Mr. Gaglardi stands convicted of sexual exploitation of GA contrary to s. 153 of the Criminal Code. This offence involved two separate incidents between 1 September 1995 and 30 June 1998, when GA was between 15 and 17 years old. Mr. Gaglardi was in his 50s. In one instance, Mr. Gaglardi touched GA's penis with his hand, during a massage that was undertaken as part of an alleged research project that GA had been convinced to participate in by Mr. Gaglardi. In the other instance, Mr. Gaglardi performed a "coffee enema" on GA, ostensibly as a form of "detoxification procedure". Both incidents occurred in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.

- [24] In his trial testimony, GA testified that he knew Mr. Gaglardi as a youth pastor at the Hillside Community Church. In his mid-teens, GA went to see Mr. Gaglardi to enquire about doing work or odd jobs to earn spending money. Originally, Mr. Gaglardi hired GA to do yard work and other things around his house. Later, Mr. Gaglardi recruited GA to participate in an alleged research project for which he would be paid, in the course of which, over time, GA allowed Mr. Gaglardi to examine his entire body, including his private areas, while GA was naked under a sheet. It was in that context that Mr. Gaglardi ultimately committed the touching offence. GA also described other instances or other conduct in which Mr. Gaglardi tried to overtly sexualize their relationship, by discussing such things as masturbation. GA also recounted an incident, years later, when he went to see Mr. Gaglardi for fitness advice, at which time GA attempted to raise the issue of the sexual touching, as it was something GA continued to harbour resentment about, but Mr. Gaglardi denied that anything inappropriate happened for which anyone needed to make amends.
- [25] The pre-sentence report indicates that GA provided comments about the impact of the offence to a victim support worker, but I have not been given any details. From the Court's perspective, I will simply say that at the time of the offences, GA was a vulnerable person, an adolescent boy, who wanted to earn some spending money. Mr. Gaglardi took advantage of the situation and indeed paid GA to participate in an alleged study on body scent, furnishing Mr. Gaglardi with opportunities to engage in bizarre, sexually intrusive behaviour with the victim. Mr. Gaglardi's conduct clearly impacted GA, as reflected in the fact that years later, he tried to raise it with Mr. Gaglardi in an effort to make things right as part of GA's own effort to deal with addiction issues.

Count 15

- [26] On count 15, I found Mr. Gaglardi guilty of sexual exploitation of JU contrary to s. 153 of the Criminal Code. This offence occurred some time between 6 January 2001 and 5 January 2003, when JU was 16 years old. Mr. Gaglardi was in his late 50s. Mr. Gaglardi touched or handled JU's erect penis, during what was referred to as a body mapping exercise in the gym area in the basement of Mr. Gaglardi's house in Coquitlam.
- [27] The Crown did not tender a victim impact statement from JU.
- [28] In his evidence at trial, JU recounted how he first came to know Mr. Gaglardi at the age of about 12 or 13, while attending the Hillside Community Church. JU believed Mr. Gaglardi was a church elder and a youth pastor. JU explained that he had emotional issues when he was a teenager. There was "trauma" in his family. He tried to spend as little time as possible at home. He considered himself a vulnerable person, lacking a supportive father figure. It was in this context that JU developed a relationship with Mr. Gaglardi. JU placed his trust in Mr. Gaglardi because of Mr. Gaglardi's relationship with the church and his older brother.

- [29] JU spent time with Mr. Gaglardi in formal counselling, and also socializing with him. JU enjoyed the counselling sessions at the time, because he appreciated Mr. Gaglardi's interest and concern, and the closeness of their relationship. JU recounted an incident in which he was contemplating suicide and sought out Mr. Gaglardi for support.
- [30] After the penis touching incident, JU started distancing himself from Mr. Gaglardi. He cannot remember if he stopped the counselling right away, but there were no more physical interactions. JU continued to see Mr. Gaglardi at church on Sundays, but he stopped interacting with him. He tried to maintain an outward "air of normality". At the same time, JU felt "heartbroken", because he thought he had found someone who cared about him and was interested in him.

Count 20

- [31] On count 20, Mr. Gaglardi stands convicted of sexual assault of AH contrary to former s. 271(1) of the Criminal Code. This offence occurred some time between 14 September 2004 and 31 December 2007. AH was between 27 and 29 years old. Mr. Gaglardi was around 60. On at least two occasions, Mr. Gaglardi performed external prostate massage on AH, using some kind of prosthetic device, ostensibly as a form of emotional release or anxiety release technique. Once again these incidents took place in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.
- [32] At trial, AH testified that he went to see Mr. Gaglardi for counselling because he was an awkward and shy person, with a speech impediment, who found it difficult to meet women and wanted to improve his confidence. He placed his trust in Mr. Gaglardi, but over time felt that Mr. Gaglardi pressured him to submit to increasingly invasive techniques.
- [33] In his victim impact statement, which AH read aloud in court, he explained that when he went to see Mr. Gaglardi he felt a lack of ability to form relationships with women. He thought Mr. Gaglardi was a professional and a man of faith. He says he was a naïve young man who was taken advantage of by Mr. Gaglardi. AH also explained in his victim impact statement that it has taken him a long time to process what Mr. Gaglardi did to him and how it has affected him. AH explained how Mr. Gaglardi's conduct caused him to be mistrustful of professionals and people in authority positions. He places less trust in people because he is suspicious of ulterior motives. He feels angry that he paid Mr. Gaglardi money and trusted him, and is saddened by Mr. Gaglardi's betrayal of that trust.

Count 23

- [34] On count 23, I found Mr. Gaglardi guilty of sexual assault of CP contrary to s. 271 of the Criminal Code. This offence involved two separate events that occurred some time between 1 January 2014 and 1 October 2014. CP was 26 years old at the time. Mr. Gaglardi around 70 years old. In one instance, Mr. Gaglardi used a towel to touch CP's erect penis, during some kind of massage treatment session. In another instance, Mr. Gaglardi inserted a q-tip into

CP's anus, ostensibly as a means of taking a fecal swab or fecal sample for a so-called "microbiome analysis". Both incidents took place in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.

- [35] At trial, CP's evidence was that he sought out Mr. Gaglardi for counselling services on the recommendation of a friend. CP was interested in counselling but did not have much money and was concerned about the cost. Mr. Gaglardi told CP that he prayed about it and concluded that he should counsel CP free of charge. CP considered it a great opportunity. He believed Mr. Gaglardi was a qualified professional with doctorates in theology, natural medicine, and psychology. The vast majority of the counselling Mr. Gaglardi provided to CP was via Skype. Mr. Gaglardi's sexual offending took place on two of the very few occasions when they met in person.
- [36] CP told the probation officer who prepared the pre-sentence report that he felt relief when Mr. Gaglardi was found guilty, realizing that he was not alone. At the same time CP felt disheartened to learn about how many others were abused by Mr. Gaglardi. CP was hopeful that during the sentencing process Mr. Gaglardi would acknowledge the pain and harm he has caused to CP and the other victims. From his own perspective, CP has been working toward forgiving Mr. Gaglardi for what he did.

Count 25

- [37] On count 25, I found Mr. Gaglardi guilty of sexual assault of JK contrary to s. 271 of the Criminal Code. This offence occurred some time between 1 December 2007 and 31 December 2007. There was no specific evidence as to JK's age, but I found that he was a young adult at the time of the offence. Mr. Gaglardi was in his early 60s. Mr. Gaglardi touched JK's scrotum with the back of his bare hand, while JK was nude, during a massage session. The offence took place in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.
- [38] In his trial testimony, JK explained that he first met Mr. Gaglardi at the Hillside Community Church. JK was not a congregant, but met Mr. Gaglardi in the course of doing work on the church's computer system. When Mr. Gaglardi told him about his education and counselling practice, JK expressed interest in counselling to deal with past trauma. JK was concerned about the cost, and Mr. Gaglardi said he could counsel JK for free as part of some kind of study. JK's sessions with Mr. Gaglardi began as counselling but quickly progressed to forms of touch therapy with the level of contact becoming more and more intrusive and uncomfortable for JK. Mr. Gaglardi also made efforts to introduce conversation about sexual topics into the therapy. After the incident in which the offence occurred, the counselling relationship devolved as JK and Mr. Gaglardi did not see eye to eye on Mr. Gaglardi's methods. Eventually, JK decided to stop going entirely.

- [39] In his comments to the author of the pre-sentence report, JK reported that he feels severely impacted by Mr. Gaglardi's mistreatment of him. As a result of the incident, JK has required and continues to attend psychological counselling. He feels as though Mr. Gaglardi took advantage of his vulnerability and manipulated him.

Background and Current Circumstances of the Offender

- [40] At trial, Mr. Gaglardi testified at length about his background, education, role in the church, his work history, and his counselling practice. Without repeating all of that here, I will simply describe what is most relevant for sentencing purposes. I also now have the benefit of the information in the pre-sentence report and the Psychological Assessment, and the submissions of defence counsel as to Mr. Gaglardi's personal circumstances.
- [41] As noted, Mr. Gaglardi is 78 years old. He was born in 1944, in Vancouver. At some point his family moved to Silverdale, B.C., which is where he grew up. Mr. Gaglardi is the youngest of three siblings. Mr. Gaglardi told Ms. Sidhu, the author of the pre-sentence report, that he had a "normal upbringing" with no abuse or neglect. His older brother confirmed that they had supportive parents.
- [42] Mr. Gaglardi has been married to his wife for 49 years. They do not have any children. Mr. Gaglardi's wife continues to support him and attended most if not all of the trial and also attended the sentencing hearing. Ms. Gaglardi takes the view that her husband has always been interested in helping people. She supports Mr. Gaglardi's continued denial of responsibility and therefore has no insight into Mr. Gaglardi's offending behaviour, although that is not something that can be used against Mr. Gaglardi or treated as an aggravating factor. It is simply something I must take into account in considering Ms. Gaglardi's description of her husband and her perceptions of his character. She has an obvious blind spot with regard to Mr. Gaglardi's conduct toward the 11 male victims, and what that says about Mr. Gaglardi's character.
- [43] Mr. Gaglardi's educational background was addressed at length in the reasons for judgment. The bottom line is that the vast majority if not the entirety of Mr. Gaglardi's post-secondary education was via correspondence or distance learning, from an institution called Ohio Christian College. Mr. Gaglardi obtained a PhD, which he described in his trial testimony as a doctorate in philosophy with a specialization in counselling. He obtained this degree in the late 1960s. Several years later, the U.S. Federal Trade Commission issued a ruling declaring that Ohio Christian College was basically a sham organization with no proper academic content or faculty and no authority to issue valid degrees. At trial, Mr. Gaglardi claimed to have only learned about all of this some time in 2020, when he decided to look into his own educational background after the charges were laid. I did not find this to be a credible account of Mr. Gaglardi's insight into the dubious nature of his academic qualifications.

- [44] Throughout his adult life, at least until very recently, Mr. Gaglardi has referred to himself as a doctor. He has used that honorific in various contexts, including in his work at Glad Tidings church, in the promotion of his counselling practice, and on a website called "Dr. Ray.ca". To be fair, he has never held himself out to be a medical doctor. Rather, he has taken the position that he is has a PhD with a specialization in counselling.
- [45] Without going into all the details spelled out in the reasons for judgment, I will say that for a fair part of his adult life Mr. Gaglardi has been involved in various churches and church-related organizations. From the late 1960s until the early 1980s, he had a formal employment relationship with the Glad Tidings church, where he worked as an "ordained counsellor", technical director of sound and productions, and educator or school guidance counsellor. In the latter years, Mr. Gaglardi has attended and been involved in various capacities at the Hillside Community Church in Coquitlam. His role there was certainly less formal, but he still had a significant presence in the church.
- [46] From some time in the 1990s up until around 2020, Mr. Gaglardi carried on a counselling practice, from an office or counselling space in the basement of his house in Coquitlam. This includes the period of time covered by the Coquitlam counts. The evidence at trial reflected that Mr. Gaglardi had literally thousands of clients in his counselling practice. A fair proportion were female or married couples. Further, a great number of his clients only saw him for talk therapy and there was no physical element whatsoever to the counselling. This is relevant because it shows that Mr. Gaglardi's entire counselling practice was not set up as a fraud or a sham solely for the purposes of facilitating sexual misconduct. I accept that Mr. Gaglardi was interested in counselling people and in helping them with their problems. However, when it comes to his physical techniques, they were not only unconventional, but Mr. Gaglardi had no professional or formal qualification to engage in them. Further, Mr. Gaglardi was opportunistic in using his status, his counselling practice, and the opportunities afforded him to have close personal contact with his clients, to prey upon and abuse the six victims in the Coquitlam counts, all of whom were vulnerable teenagers or young men.
- [47] Mr. Gaglardi has indicated, and I accept, that after he was charged in this matter, he closed his counselling practice and he has no intention of ever returning to it. He has also shut down his website. At the age of 78, and with the consequences of the sentence that are going to be visited upon him, I find there is literally no prospect of Mr. Gaglardi offering counselling to any members of the public in the future.
- [48] Mr. Gaglardi has no criminal record. At sentencing his counsel filed a total of 14 reference letters, or letters of support. The people who penned these letters, at least within their scope of knowledge, consider Mr. Gaglardi to be a good person who has made positive contributions to the community. However, the case law recognizes that in view of the secretive nature of sexual offending of the sort engaged in by Mr. Gaglardi, character references of this sort are of limited value. See *R. v. Kissner*, 2019 ONSC 4872, *aff'd* 2020 ONCA 684, where the trial judge explained at para. 36 that the public persona of the offender

can be much different than the persona exhibited to the victims. The judge went on to quote from *R. v. Profit*, [1993] 3 S.C.R. 637 that in this context, the "propensity value of character evidence as to morality is diminished". See also *R. v. Baltazar*, 2021 ABQB 879 at para. 45. In this case, the letters show that Mr. Gaglardi has some positive traits and has interacted with a fair number of people who continue to support and respect him. But the crimes committed by Mr. Gaglardi were perpetrated in private, in a context where his reputation and good standing in various churches was actually one of the factors that led the victims to place trust in him.

- [49] Mr. Gaglardi is in relatively good health for his age. There are some concerns about the state of his heart. At the time of the sentencing hearing, Mr. Gaglardi was waiting on an appointment to see a cardiologist. He has also had some issues with his prostate and is being monitored for cancer. In the pre-sentence report, Mr. Gaglardi said he had no mental health concerns, although he struggles with memory issues. Others, including his wife and his brother, are concerned that Mr. Gaglardi is hiding the extent to which the criminal proceedings are affecting his emotional or mental state.
- [50] With regard to his attitude toward the offences, Mr. Gaglardi continues to maintain that he did nothing wrong. He says he has only ever had intimate relationships with age-appropriate women, and denies any sexual interest in males or in children. Mr. Gaglardi's refusal to accept responsibility for the offences is not an aggravating factor on sentencing. It simply reflects an absence of remorse, which is an absence of a mitigating factor. This is unfortunate because it deprives the victims of any sense that Mr. Gaglardi acknowledges the harm that he has caused.
- [51] Mr. Gaglardi's attitude toward the offences and the offending behaviour is also a relevant factor when it comes to risk assessment. Because he lacks insight or will not come to grips with his offending behaviour, he is not able to appropriately deal with it by way of counselling and treatment. Mr. Gaglardi does indicate that he is willing to participate in any program that he is required to attend, but that process will obviously not be as beneficial in addressing risk of re offence as it would if Mr. Gaglardi acknowledged his conduct so that he could implement strategies to mitigate risk.

Psychological Assessment

- [52] Mr. Gaglardi participated in the preparation of a psychological assessment intended to assess his risk of re-offence. He was assessed on two separate scales, one that is static or actuarial, and the other that is dynamic or subjective. On the static analysis, Mr. Gaglardi's risk of re-offence fell into the very low range. On the dynamic analysis, his risk was assessed as moderate. His denial of wrongdoing meant that the dynamic assessment was based on less than complete information.

- [53] Risk assessment is an important factor in sentencing for sexual offences, because the offender's criminal conduct can be driven by persistent sexual deviance, and because of the gravity of the harm associated with re-offence.
- [54] In Mr. Gaglardi's case, despite his unwillingness to acknowledge the crimes and his consequent lack of insight, I would conclude that Mr. Gaglardi's overall risk of re-offence is low. I say that for three reasons. First, Mr. Gaglardi is presently 78 years old and will be older still when his sentence is completed. At such an advanced age his means and opportunity would be significantly diminished. Second, Mr. Gaglardi has indicated both in his testimony and in the pre-sentence report that he has shut down his counselling practice and I find that there is literally no chance of it ever starting up again. This will further limit Mr. Gaglardi's means and opportunity. Third, apart from the offences for which he is now being sentenced, Mr. Gaglardi has no prior criminal record and has lived a pro-social lifestyle. Even though he does not admit guilt, I can accept that he would abide by any terms or conditions of parole and is therefore unlikely to place himself in situations where he could re-offend, at least up to the point of warrant expiry. The risk can never be completely eliminated but in this case it is low.

Sentencing Parameters for the Offences

- [55] In respect of all five Vancouver counts (counts 3, 5, 6, 8, and 10), the offence in question was indecent assault of a male contrary to former s. 156 of the Criminal Code. At the time the offences were committed, the maximum penalty was ten years in jail for each count.
- [56] In respect of counts 13 and 15, the offence was sexual exploitation by a person in a position of trust or authority toward a young person. At the time the offences were committed, the maximum penalty under the statute was five years in jail for each count.
- [57] With respect to counts 12 and 20, and 25, the offence was sexual assault under former s. 271(1) of the Criminal Code. At the time of the offences, the maximum penalty was ten years in jail on each count.
- [58] With respect to count 23, the offence was sexual assault under s. 271 of the Criminal Code. At the time of the offence, the maximum penalty where the complainant was 16 years or older was ten years in jail.

Crown and Defence Positions on Sentence

- [59] It is common ground between the Crown and the defence that because of the seriousness of the offences and the effect on the victims, a jail sentence is required. It is also common ground that the overall length or duration of the sentence must be more than two years, such that it must be served in a federal penitentiary.

- [60] The Crown and the defence are also more or less on the same page as to the appropriate structure of the sentence. To explain, both parties recognize that since the offences in question relate to 11 separate incidents or series of incidents involving 11 separate victims, consecutive sentences are required. This is not a proper case for concurrent sentences. Both parties further recognize that after determining the fit sentence for each count, the Court must then consider whether the overall length or duration of the 11 consecutive sentences added together would in its totality be longer or harsher than is warranted in view of the offender's overall culpability and personal circumstances.
- [61] Where the Crown and defence part company is on the length of sentence, both in terms of the individual offences and the net result.
- [62] The Crown argues for consecutive sentences totalling 17 to 24 years, and goes on to say that under the totality principle the total length of the sentence should be 10 to 12 years in jail. The Crown stresses the seriousness of the offences, in terms of the abuse of trust, vulnerability of the victims, and the substantial victim impacts. The Crown also seeks a mandatory DNA collection order, and an order requiring Mr. Gaglardi to be on the sex offender registry for 20 years.
- [63] The defence submits that Mr. Gaglardi should receive consecutive sentences totalling 6.5 to 7.5 years, which should then be reduced under the totality principle to arrive at a net sentence of 3 to 4 years. The defence stresses the low risk of re-offence, the fact that Mr. Gaglardi has no criminal record and has family and community support, and Mr. Gaglardi's advanced age and somewhat poor health.

Legal Analysis

- [64] In addressing sentencing for sexual offences, particularly sexual offences involving youthful and vulnerable victims, I take considerable guidance from the Supreme Court of Canada's decision in *R. v. Friesen*, 2020 SCC 9.
- [65] In *Friesen*, the Court was dealing specifically with sentencing for offences of sexual violence against children, that is, victims who were under the age of 18. The Court held that sentences for crimes of sexual violence against children must increase. There were several considerations that led to this conclusion. One was an emerging, deeper understanding of the vulnerability of child victims, and the profound harm that such criminal conduct causes to victims, families, and communities. Another was that, through amendments to the Criminal Code over the past 15 years or so, Parliament has mandated that sentences for sexual offences against children must increase.
- [66] The Court went on to offer specific guidance on sentence increases for such offences, stating among other things at para. 114 that "mid-single digit penitentiary terms for sexual offences against children are normal and that upper single-digit and double-digit sentences should be neither unusual nor reserved for rare or exceptional circumstances". It is with some trepidation that I have plucked out and cited this single line of the case on sentencing

ranges. This is no doubt a gross over simplification that does not do justice to the guidance offered by the Court in Friesen. Indeed, the Court was clearly concerned about the rigidity of sentencing ranges generally, and was reluctant to lay down any kind of national starting point or national sentencing range for offences of sexual violence against children. Still, the Court ultimately decided that sentencing ranges for sexual offences against children had to increase, for the reasons I listed above, and the Court also delineated a number of factors to be considered in determining fit sentences for such offences.

- [67] In the wake of this recent guidance from the Supreme Court of Canada, it is now important for courts to distinguish between pre-Friesen and post-Friesen sentencing decisions. The sentences imposed in cases decided before Friesen may not reflect a proper understanding of the objective gravity and moral blameworthiness of offences of sexual violence against children. At para. 110 of Friesen, the Court cautioned against relying on "dated" sentencing precedents that do not reflect society's current awareness of the impact of sexual abuse on children.
- [68] However, there is some need for caution in considering Friesen in cases dealing with what is sometimes referred to as "historical" sexual offences. Depending on how far back the offences reach, one must consider whether some or all of the Criminal Code amendments compelling the Court in Friesen to conclude that Parliament has mandated an increase in the severity of punishment for sexual offences against children were actually in force at the time of the offending behaviour. Section 11(i) of the Charter guarantees that where the punishment has been varied between the date of the offence and the time of sentencing, the offender is entitled to the benefit of the lesser punishment.
- [69] This point was addressed in *R. v. Gerrard*, 2021 BCSC 1219, wherein Justice Shergill stated:
- [18] In the context of historical sexual offences such as this one, it is important to bear in mind that some of the legislative initiatives that support increasing sentences occurred after the offending period. These include increasing the statutory maximum for these offences, and the provisions contained in s. 718.01 of the Code. However, as the Court stated in Friesen, there exists another compelling reason for an upward departure of sentences - our contemporary social understanding of harmfulness and the wrongfulness of sexual offences against children. Indeed, as our Court of Appeal noted in *R. v. Plehanov*, 2020 BCCA 249 at para. 19, the Friesen principles have general application even in cases where the offence predates the legislative changes.
- [70] Justice Gomery also considered the issue in *R. v. N.S.N.C.*, 2020 BCSC 1843, in the following passage:
- [35] Unfortunately, there is some difficulty applying Friesen in cases of offences committed many years ago. Friesen gives two reasons why an increase is necessary: first, the sentences imposed must reflect the courts' current, better understanding of the wrongfulness and impact of sexual offences against children; and second, sentences should increase to reflect increases in the maximum sentences available for certain sexual offences. In the case of an

offence committed in 1993, the first of these reasons is applicable, but the second is not because, pursuant to s. 11(i) of the Canadian Charter of Rights and Freedoms, Mr. C has the right to have his sentence determined on the basis of the maximum sentence in 1993 (10 years) as opposed to the higher current maximum of 14 years.

- [36] The Crown quotes a direction from Friesen at para. 114 that "mid-single-digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances". This direction is based on both parts of the reasoning in Friesen, and only half of that reasoning carries weight in this sentencing. Indeed, a double-digit sentence above 10 years would not be legal in this case, because it would exceed the maximum, and a high single-digit sentence could not be justified.
- [71] Justice Gomery went on to consider and apply certain portions of Friesen reflecting the Supreme Court of Canada's recognition of the inherent moral blameworthiness of sexual offences against children in view of the vulnerability of child victims, and the profound harm that sexual violence causes to child victims, their families, and communities more generally.
- [72] Finally, as Justice Shergill noted in Gerrard, the application of Friesen to sentencing for offences committed before the statutory amendments cited by the Supreme Court of Canada was also considered in Plehanov. There, Justice Grauer stated at para. 19 that while Friesen was decided "in the context of legislative amendments that predate the offence in issue here", the Supreme Court of Canada's guidance was "of general application to a wide spectrum of sexual offences against children". Grauer J.A. went on at para. 20 to quote at length from Friesen, citing passages about the seriousness of the harm and the wrongfulness or moral blameworthiness of sexual offences against children. I find it noteworthy, however, that none of the passages cited by the Court in Plehanov address the Supreme Court of Canada's more specific guidance on actual sentencing ranges. I consider that to be significant because in my view those portions of the Court's reasoning in Friesen are tied more or less directly to the statutory amendments in which Parliament had "mandated" that the sentences for sexual offences against children must increase. By virtue of s. 11(i) of the Charter, that statutory mandate cannot be applied retrospectively in the context of sentencing for a criminal offence.
- [73] The message I take from the case law that I have just reviewed can be stated in two propositions. First, sentencing judges must always take into account what the Supreme Court of Canada said in Friesen about the seriousness, harmfulness, and moral blameworthiness of sexual offences against children. Second, in dealing with offences committed before the Criminal Code amendments mandating increased sentences for such offences, sentencing judges cannot apply the more specific guidance in Friesen regarding sentencing ranges, because that guidance rests at least in part on amendments that were not in force at the time of the offences.

- [74] With those parameters in mind, dealing specifically with the seriousness and moral blameworthiness of sexual offences against children, the points that I would take from Friesen and apply in the case at bar can be summarized as follows:
- (a) It is essential for sentencing judges to have a proper understanding of the wrongfulness of sexual offences against children, and the harm that such offences causes to victims: Friesen at para. 50.
 - (b) The interests that the law is designed to protect include personal autonomy, bodily integrity, sexual integrity, dignity, and equality. In this regard, sentencing courts need to be aware of not merely the physical harm that sexual offences cause to the victim, but also the emotional and psychological harm. Thus, the likely effects of sexual offences include "shame, embarrassment, unresolved anger, reduced ability to trust others", and fearfulness: Friesen at para. 55-57.
 - (c) These forms of harm are particularly pronounced in children. Even a single instance of sexual violence can profoundly alter a child's life: Friesen at para. 58.
 - (d) Sexual violence against children also causes harm in the form of damaged relationships with families and caregivers. Sexual violence can tear families apart and render them dysfunctional. Parents or siblings may have a misguided sense of blame toward the child victim. And child victims may lose confidence in the ability of family members to protect them: Friesen at para. 60.
 - (e) Sexual violence against children can have ripple effects on other relationships. Among other things, child victims of sexual violence may experience a loss of trust amongst people they know or the community at large: Friesen at para. 61.
 - (f) The protection of children from harm is one of the most fundamental values in our society. Sexual violence against children is wrong and especially morally blameworthy because it can turn this societal value on its head: Friesen at para. 65.
 - (g) Perpetrators of sexual violence against children commit their offences in secrecy, often using coercion to discourage child victims from reporting the crime. Offenders also rely on society's naïve reluctance to recognize or acknowledge that such crimes are committed in their communities by individuals they know: Friesen at para. 67.
 - (h) It is not enough for courts to simply acknowledge the seriousness of sexual offences against children. The sentences imposed must actually reflect the gravity of the crime and the harm to the victims: Friesen at para. 76.
 - (i) Physical contact of a sexual nature with a child always constitutes a wrongful act with both physical and psychological components, even when the conduct is not accompanied by additional physical violence and does not result in physical or psychological injury: Friesen at para. 77. Courts must reject the belief that there is no serious harm to children in the absence of additional physical violence: Friesen at para. 82.

- (j) The harms caused by sexual violence against children include harm that manifests itself during childhood, and long term harm that only becomes evident during adulthood: Friesen at para. 80.
 - (k) Applying force of a sexual nature to children is always morally blameworthy. Such blameworthiness includes harm that was actually intended, and harm to which the offender is reckless or wilfully blind: Friesen at para. 88.
 - (l) The moral blameworthiness of sexual violence also includes the recognition of the offender's wrongful sexual exploitation and objectification of the victim. The degree of blameworthiness is higher when the victim is a child, because children are so vulnerable: Friesen at para. 89-90.
 - (m) Despite all of this, the sentencing court should not overlook factors that tend to diminish the offender's blameworthiness, where they are present: Friesen at para. 91.
- [75] The Court went on to discuss a number of factors that may be considered in determining a fit sentence for sexual offences against children, namely (a) likelihood of re-offence, (b) abuse of a position of trust or authority, (c) duration and frequency of the offending conduct, (d) age of the victim, and (e) degree of physical interference.
- [76] With regard to point (e), the degree of physical interference, the Court discouraged sentencing judges from downgrading the seriousness of the offence based principally on the notion that the particular acts in issue may not have been physically intrusive: Friesen at para. 144. Earlier in the judgment the Court discouraged sentencing judges from focusing on the presence or extent of physical injury, which could detract from a proper consideration of the psychological and emotional impacts of the crime on the victim: Friesen at para. 56, 77.
- [77] Friesen dealt with sentencing for sexual offences against children, and defined a child to be any victim under the age of 18. In Mr. Gaglardi's case, seven of the 11 victims were under the age of 18 at the time that the offences were committed against them. The Friesen principles that I have just reviewed are directly applicable in their cases. The remaining four victims in this case were older than 18, although they were all relatively young, vulnerable men, and Mr. Gaglardi was much older. Thus, while the points in Friesen about sexual offences against children do not have direct application to the four counts involving adult victims, many of the Court's remarks about the nature of sexual violence and its potential impacts on the victim are still informative.
- [78] I will address the factors discussed in Friesen and how they apply in this case. To avoid unnecessary repetition, I will do so globally, rather than addressing each count and victim individually. It should be understood that, in taking this approach, I remain mindful that Mr. Gaglardi is being sentenced on 11 different counts, consisting of a variety of different offences, against 11 different victims. Certainly when it comes to considering the fit sentence for each count, I will focus on the particular offence, the extent of the offender's

blameworthiness for that offence, and the impact on that particular victim.

- [79] With regard to point (a), risk of re-offence, I have already noted that in this particular case, in view of Mr. Gaglardi's age and his anticipated personal situation upon the completion of his sentence, the risk of re-offence is quite low. This is not a case where I must fashion a very lengthy sentence based principally or primarily out of concern for the need to protect the public from Mr. Gaglardi in the future.
- [80] With regard to point (b), abuse of a position of trust or authority, this is now a statutory aggravating factor as set out in s. 718.2(a)(iii). This provision was first introduced in 1995. However, even before its codification, the common law recognized abuse of trust or authority as an aggravating feature in sentencing for sexual offences: *R. v. S.B.T.*, 2010 BCCA 145 at para. 16. In the current matter, based on the findings set out in my reasons for judgment, I conclude that Mr. Gaglardi abused a position of trust in relation to each of the 11 victims.
- [81] In the Vancouver counts, Mr. Gaglardi was in a position of trust in relation to each of the five victims. He was also in a position of actual authority in relation to some of the victims, due to his position at the Glad Tidings Academy. That is particularly the case with RF, where Mr. Gaglardi used his position in the school and, or the church to approach RF and effectively demand that he attend his office in order to be inspected for a venereal disease. In any event, in relation to all five Vancouver victims, Mr. Gaglardi abused a position of trust by using his status in the Glad Tidings organization and his particular relationship with each of the victims to furnish the opportunity to commit the offence. Many of the victims spoke in their trial testimony about how they trusted Mr. Gaglardi because of his status at the church and in the school, his title as a doctor, and in some cases his particularly close relationship with them. In each case Mr. Gaglardi betrayed that trust, and it is obvious from the victim impact statements that this betrayal of trust has had impacts and ripple effects on the victims in the years following the abuse.
- [82] In the Coquitlam counts, once again Mr. Gaglardi was in a position of trust in relation to each of the six victims. Many of the victims came to know Mr. Gaglardi through his association with the Hillside Community Church. While Mr. Gaglardi did not hold any formal office or position in the church, the evidence reflects that he was a person with some stature in the church organization. In addition to his affiliation with the church, there was also Mr. Gaglardi's professed education and expertise. Mr. Gaglardi claimed to have a PhD, referred to himself as "Dr. Ray", and represented that he had expertise in counselling and in various therapeutic techniques. All of the victims were much younger than Mr. Gaglardi. All of them were vulnerable and seeking guidance or assistance for challenges in their lives. All of the victims placed their trust in Mr. Gaglardi to help them. Mr. Gaglardi abused that trust by touching each of the victims in a sexual manner, sometimes using bizarre techniques as a ruse or rationale. The victims were led to believe that the conduct in issue was somehow for their benefit or their health. From the testimony of the witnesses at trial, their victim impact statement, and what they said in the pre-sentence report, one can see that the victims have

been seriously impacted by the abuse of trust feature of Mr. Gaglardi's crimes. It has caused them psychological and emotional trauma, undermining their self confidence and ability to trust others. Some have had to seek out counselling from properly trained professionals, simply to cope with the manner in which Mr. Gaglardi abused the trust that they placed in him.

- [83] With regard to point (c), duration and frequency of the offending behaviour, this factor cuts both ways in the present case. On the one hand, this is not a case where any of the victims was serially abused in a repetitive way for months or years. In relation to each victim, there were between one and three instances of abuse. However, when one examines Mr. Gaglardi's conduct globally, we can see that he abused a total of 11 victims over a span of 44 years. One cannot say that Mr. Gaglardi's sexual misconduct was an isolated event in his life. During two phases of his life, over many years, Mr. Gaglardi acted opportunistically by using his relationships with boys or men who were much younger and less mature than him to engage in sexually inappropriate behaviour.
- [84] With regard to point (d), the age of the victim, in Mr. Gaglardi's case the victims ranged in age from as young as 10 to as old as 30. To be fair and balanced, the victims were not children of tender years. However, many of the victims were children and all of them were much younger and less mature than Mr. Gaglardi at the time of the offending behaviour. The victims in the Vancouver counts were all under the age of 18 and some were much younger. It is of particular significance that the victims were adolescent males, each dealing with his own personal challenges, insecurities, emotional needs, and physical development at the time of the offending behaviour. The victims in the Coquitlam counts were somewhat older. Some were under the age of 18, but many were young adults. However, even in relation to these victims, all were much younger than Mr. Gaglardi, and much less mature than Mr. Gaglardi. In each case, Mr. Gaglardi took advantage of that when he victimized them.
- [85] With regard to point (e), degree of physical interference with the victim, it must be acknowledged that Mr. Gaglardi did not use any overt physical violence toward his victims, although I would be quick to point out the Court's point in Friesen that any and all forms of sexual touching are inherently violent, because they involve non-consensual interference with the physical and sexual integrity of the victim. The forms of touching were certainly significant enough to be memorable to each of the victims. In many cases, the manner in which Mr. Gaglardi touched the victim was part of a ruse or staged procedure used by Mr. Gaglardi to obtain the victim's tacit and uninformed consent. In some cases, the manner of touching was frankly bizarre. I should acknowledge that in some cases, the touching was only brief, lasting a matter of seconds, although as I explained in my reasons for judgment, even in those cases I was satisfied that the touching was intentional and that it was sexual in nature. Although the touching in Mr. Gaglardi's case was not physically intrusive, I would not underestimate the degree of intrusion into the sexual integrity, autonomy, and dignity of each of the victims. In the Vancouver counts, the victims were all adolescent boys, and the evidence and victim impact statements indicate to me that Mr. Gaglardi's conduct was, at the

time, embarrassing, humiliating, and in the eyes of the victims, shameful. And in a number of cases the conduct had lasting impressions on the victim's self image, self worth, and ability to trust. In the Coquitlam counts, in some cases the touching was very physically intrusive and in other cases it was less so. However, once again it is necessary to consider the impact on the sexual integrity, autonomy, and dignity of the victims. All of the Coquitlam victims were vulnerable boys or young men. Most saw Mr. Gaglardi for counselling, and in that context, Mr. Gaglardi used bizarre therapeutic techniques to provide an opportunity to intrude on the sexual integrity of the victims. Some of the victims have spoken explicitly about the manner in which Mr. Gaglardi's conduct deprived them of dignity.

- [86] I turn next to a consideration of the principles and objectives of sentencing.
- [87] The overarching point of sentencing is for the court to impose a sanction that is proportionate to the gravity of the crime and the degree of moral blameworthiness of the offender. This principle is now codified in s. 718.1, but has "long been central to Canadian sentencing": Friesen at para. 30. In the present case, we must start from the footing that the offences were serious and that Mr. Gaglardi's conduct was highly blameworthy.
- [88] The other sentencing objectives that are most relevant in this case are denunciation and general deterrence.
- [89] Denunciation is the idea that the court should impose a sentence that reflects society's condemnation of the crime: Friesen at para. 105; *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at para. 81. Here, once again, it is acknowledged that sexual offences, particularly those involving both young victims and an abuse of a position of trust, involve conduct warranting severe rebuke in the form of a substantial jail sentence.
- [90] General deterrence is the idea that the court should impose a sanction that will discourage other, like minded individuals in our society from committing similar criminal acts: *R. v. B.W.P.*, 2006 SCC 27 at para. 2. One might be tempted to think that because Mr. Gaglardi's conduct was so offensive and bizarre, there are not many others in the community who would commit acts of this sort. Unfortunately, the case law that has been presented to me shows that sexual offending of this sort is more common than anyone would hope, and, of course, there are regrettably, other cases where such abuse occurs but is never uncovered. Sentencing decisions dealing with offences of this sort must send a clear and consistent message that crimes of sexual violence will be met with substantial penalties.
- [91] Specific deterrence is also relevant, in that Mr. Gaglardi must receive a sentence that brings home to him personally the unacceptable nature of his conduct, so that it will not be repeated. Of course, as I have noted above, the risk of re-offence in this particular case is low, for other reasons.
- [92] That brings me to the issue of rehabilitation. In my view, rehabilitation is not a significant factor in this particular case, for several reasons.

- [93] First, the case law acknowledges that for sexual offences involving young victims, and abuse of a position of trust, the sentencing objectives such as denunciation and deterrence should generally take priority over rehabilitation. I note that s. 718.01 - which provides that in sentencing for offences involving abuse of a person under 18 years of age, the court must give "primary consideration" to the objectives of denunciation and deterrence - was first enacted in 2005. This provision came into force after the most recent offence involving a child victim in Mr. Gaglardi's case, and it cannot be applied retrospectively to his case. However, even before the introduction of this section, the common law placed priority on principles of denunciation and deterrence in cases of sexual offences against children, particularly where the offender abused a position of trust in committing the offence. The objective of rehabilitation is a much less important factor in such cases: see N.S.N.C. at para. 26, citing *R. v. D.G.*, 2014 BCCA 84 at para. 16-17; *R. v. S.B.T.*, 2010 BCCA 145 at para. 16; *R. v. A.E.S.*, 2018 BCCA 478 at para. 54. See also *R. v. Bremner*, 2000 BCCA 345 at para. 34.
- [94] Second, since Mr. Gaglardi has not acknowledged doing anything wrong, his lack of insight or willingness to accept responsibility is a substantial impediment to full rehabilitation. Again, I acknowledge that lack of remorse is not an aggravating feature. However, where the offender does not accept responsibility for the offence, it is much more difficult for the court to fashion a sentence that focuses on issues such as offender re-integration. Still, even in this context, there is a hope and expectation that upon being sentenced, and while serving his sentence, Mr. Gaglardi will reflect upon and come to grips with his misconduct, so that he can move along the path of rehabilitation.
- [95] Third, I have found that Mr. Gaglardi poses a low risk of re-offence. This is not because of rehabilitation, but because in my view his risk factors are such that he will not be in a position to commit further offences in the future. So, in sentencing Mr. Gaglardi, the Court is not pre-occupied with finding a disposition that is tailored to address his treatment needs or risk factors.
- [96] For all of these reasons, rehabilitation will not be not a central or controlling feature in the sentence that Mr. Gaglardi is to receive.
- [97] Another important sentencing objective or sentencing principle is the idea that similar offences committed by offenders in similar circumstances should receive comparable sentences. This is known as the parity principle. Even before its codification in s. 718.2(b) of the Criminal Code, this principle has been a well-known feature of sentencing in our justice system: Friesen at para. 31. Parity is important because it introduces a level of objectivity and rationality to sentencing. However, it is often difficult to achieve in practice, because sentencing is an individualized process. No two cases are exactly alike, and of course every offender is an individual with a unique background and personal circumstances. In *R. v. Parranto*, 2021 SCC 46 at para. 11-12, Justices Brown and Martin acknowledged the inherent tension between the principles of parity and individualization, but went on to explain that both are accounted for within the overarching principle of proportionality. See also Friesen at para. 32.

- [98] In considering the principle of parity, the added difficulty in the present case is that some of the sentencing decisions that are perhaps most similar or most comparable on their facts are what I have referred to as pre-Friesen cases. Without repeating everything I have said above, that is relevant because Friesen provides important common law guidance as to how courts should view the seriousness, harmfulness, and moral blameworthiness of offences involving sexual violence against children, and how all of this should actually be reflected in the determination of a fit sentence. So the pre-Friesen cases have to be read in that light.
- [99] With regard to the Vancouver counts, the Crown cites *R. v. R.C.*, 2022 ONCA 389 as a useful sentencing precedent. That case involved a 70 year old offender who entered a guilty plea to a single count of indecent assault that had occurred some 50 years earlier. At the time of the offence, the victim was 12 or 13 and the offender was 21. The offence involved a single incident that occurred when the victim and the victim's brother were staying over night at the accused's residence. The accused entered the bedroom where the victim and his brother were sleeping, gave the victim alcohol, and then engaged in various forms of overtly sexual touching. The incident ended when the victim began to cry. As I say, the offender was 70 years old at the time of sentencing. This was a post-Friesen case, and both the trial judge and the appeal court took the Friesen principles into account. The appeal court agreed with the trial judge that the now repealed offence of indecent assault was most comparable to the current offence of sexual interference. The sentencing judge imposed a jail term of nine months for this single count. The appeal court affirmed that sentence, but in doing so, commented that it was at the lower end of the appropriate range for such a case.
- [100] I would say that *R.C.* offers some guidance in terms of the fit sentence for a single incident of indecent assault. However, the circumstances were somewhat more favourable to the offender, or less aggravated than the matters that I am dealing with in a number of respects. First, there was a guilty plea, meaning that the offender was entitled to some credit for both avoiding a trial and for acknowledging responsibility for his conduct. Second, while there was a relationship of trust or authority, I would say that in the case at bar the nature of Mr. Gaglardi's position of trust and authority, and the manner in which he used it to commit the Vancouver offences was much more aggravated. Certainly, the Court in *R.C.* did note the abuse of trust, as well as the harmful, life-long impact of the crime on the victim.
- [101] The Crown also cites *Gerrard*, to which I have referred earlier in my reasons. That case involved sentencing of an offender convicted after trial of a single count of sexual interference. The offence occurred in the mid 1990s, at which time the victim was 11 to 12 years old and the offender was in his mid to late 30s. The victim was attending a sleepover with the offender's daughter. The offender entered the room where the victim was sleeping and touched her breasts and also placed his hand inside her underwear. The incident ended when the offender bumped into a night stand and his daughter awoke. The offender had no prior criminal record and no subsequent arrests or involvements with the justice system. This was once again a post-Friesen case. The sentencing judge imposed a 20 month jail term

followed by probation.

- [102] In *Gerrard* at para. 64, the sentencing judge appeared to apply not just the general principles articulated in *Friesen*, but also the more specific guidance about sentencing ranges at para. 110 of the *Friesen* decision. For my part, I agree with the sentiment expressed at para. 36 of *N.S.N.C.* that the comment at para. 110 of *Friesen* about particular sentencing ranges is not readily transposable to offences committed prior to the Criminal Code amendments relied upon to signal the legislature's mandate for an increase in the severity of sentences. Nevertheless, I find that *Gerrard* offers some guidance in terms of identifying a proper range of sentence for offences of sexual interference. I would say that the abuse of trust feature of the *Gerrard* case, even though it was described by the sentencing judge as multi-layered and profound, was not as aggravated as it was in relation to the Vancouver counts in the case before me.
- [103] With regard to the Coquitlam counts, I have been referred to a number of cases of sexual offences committed in the context of what the parties have referred to as treatment or therapeutic relationships. I am not going to review all of them. I will simply comment on the cases which in my view bear the greatest degree of similarity to the case before me.
- [104] The offender in *R. v. Baltazar*, 2021 ABQB 879 was a registered massage therapist who was convicted after trial of 11 counts of sexual assault. The offences involved inappropriate sexual touching of the genital areas of 11 separate victims, during massage therapy sessions. All of the victims were adult males. The offender was in his early 40s at the time of sentencing. The sentencing judge found that he had no insight into the nature of his offences or the impact on his victims. The offender had community support but the sentencing judge considered that to be of little weight given that sexual offences of this sort can be perpetrated by individuals who might otherwise present as upstanding members of the community. The judge found that the conduct was predatory and involved an abuse of trust. As in the case at bar, there was compelling evidence of the negative impact that the offences had on a number of the victims. The sentencing judge determined that the appropriate sentence for each count ranged from two to six months in jail to be served consecutively, for a total of 42 months, which the judge then reduced under the totality principle to produce a net sentence of 31 months in jail.
- [105] In many ways, the offender's misconduct in *Baltazar* is comparable to Mr. Gaglardi's misconduct in the Coquitlam counts. However, in my view Mr. Gaglardi's conduct was different and more aggravated in two respects. The first difference has to do with the age and circumstances of the victims. Two of the six victims in the Coquitlam counts were under the age of 18. All of them were much younger and less mature than Mr. Gaglardi. The second difference has to do with the nature of the trust relationship. Mr. Gaglardi was a trusted member of a church community, who used his position and his stated education and experience to gain the trust of the victims. All of the victims in the Coquitlam counts were vulnerable boys or young men, seeking assistance for personal problems in their lives. Mr. Gaglardi exploited their vulnerability. In this sense, Mr. Gaglardi's conduct

involved a much more aggravated and damaging betrayal of trust that was the case with the offender in Baltazar.

- [106] In *R. v. Swope*, 2015 BCCA 167, the offender was convicted after a trial of six counts of indecent assault committed in the early 1980s, against students in the offender's grade two class. The victims were all between six and eight years of age, and the offender was in his early 40s. The assaults ranged from rubbing the complainant along her thigh over the underwear to rubbing the complainant's vagina underneath the underwear. Each of the victims was assaulted a minimum of three times, and some were assaulted on a daily basis throughout an entire school year. By the time of sentencing, the offender was 78 years old and in poor health. The sentencing judge determined that the fit sentence was between six and 18 months per count, to be served consecutively for a total of 76 months, which the judge then reduced by one half on account of the totality principle. The resulting 38 month penitentiary sentence was upheld on appeal.
- [107] In affirming the sentence, the Court of Appeal gave particular attention to the offender's age and health. Speaking for the Court, Justice Groberman recognized that sentencing judges should generally avoid the imposition of a fixed-term sentence that "so greatly exceeds the offender's expected remaining life span" that "traditional goals of sentencing" have "all but depleted their functional value": *Swope* at para. 32, citing *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 92. The court should be "cognizant" of an elderly offender's limited life expectancy in assessing the overall "severity of the sentence". Although this consideration should not overwhelm the analysis, there must be "scope for courts to be compassionate towards aged and infirm persons in the course of sentencing": *Swope* at para. 32-35. Even though the offender in *Swope* was 78 years old, the Court was not convinced that the 38 month jail sentence imposed by the court below was "overly-long or oppressive": *Swope* at para. 36.
- [108] I was referred to a long list of other cases involving sentencing for sexual offences perpetrated by treatment providers or other professionals against their patients or clients. I found most of them to be unhelpful, because they are "pre-Friesen" sentencing precedents.
- [109] By way of example, the defence suggested that *R. v. Alfred*, 1998 CanLII 5364 (ON CA) is a useful comparator. I do not agree. Although the conduct in issue might have been comparable in that it involved multiple counts of sexual touching of children by a physician in the course of clinic visits, the court's approach to the structure of the sentence is not helpful or apt in this case. To explain, the sentencing judge imposed a conditional sentence for some counts in combination with a custodial sentence on others. The appeal court found this to be an error and corrected it, but even after that imposed a combination of concurrent and consecutive sentences totalling 25 months in jail. Above and beyond my concern about the structure of the sentence itself, I note that this is a pre-Friesen case decided without the benefit of the Supreme Court of Canada's guidance on the need to impose sentences that truly reflect the gravity and moral blameworthiness of offences of sexual violence against children.

- [110] The sentence that is imposed on Mr. Gaglardi must take into account both the aggravating and mitigating circumstances.
- [111] In assessing Mr. Gaglardi's overall moral blameworthiness, I find that there are a number of aggravating features in the present case, specifically: (i) the serious abuse of trust relationships, (ii) the age and vulnerability of the victims, (iii) the number of victims, (iv) the substantial and enduring victim impacts, and (v) the duration of time over which the offences were committed.
- [112] On the other side of the scale, there are two identifiable mitigating features.
- [113] The most significant point of mitigation is the advanced age and health challenges faced by the offender at the time of sentencing. Although this does not mitigate Mr. Gaglardi's culpability, it is a factor that causes the Court to carefully examine the duration of the sentence to be imposed. The sentence should not be any longer than necessary, and the Court must be mindful of its effect upon a person who is in his late 70s.
- [114] Another mitigating feature is the absence of any prior record, and the existence of some continuing community support for the offender. I hasten to add that this factor is of very limited weight in the case at bar, because the fact is that Mr. Gaglardi was able to engage in the offending conduct over more than four decades without it coming to light in a manner that would put a stop to it. This was at least in part because of Mr. Gaglardi's stature in the community and his ability to carry on these acts in private without the knowledge of those who would otherwise consider him to be a contributing member of the community.

Determination of the Fit Sentence for Each Count

- [115] On count 3, indecent assault of RF, the Crown suggests a sentence of 18 to 24 months in jail. The defence argues for a sentence of six months. There were two separate incidents, both of which involved a significant abuse by Mr. Gaglardi of a position of authority and trust. The impact on the victim was substantial and prolonged. The victim's sexual integrity was violated, and his family relationships were damaged, irreparably. I find that the proper sentence is 20 months in jail.
- [116] On count 5, indecent assault of GP, the Crown suggests a sentence of 12 to 18 months in jail. The defence says the Court should impose a three month jail sentence. This offence involved a single incident of unwanted touching, that was brief in nature. However, the victim was an extremely vulnerable boy, highly influential, in need of positive male role models in his life. His vulnerability was exploited, and his trust was betrayed and broken. A jail sentence of eight months is required.

- [117] On count 6, indecent assault of RM, the Crown argues for a sentence of 18 to 24 months. The defence submits that Mr. Gaglardi should receive a three month jail sentence. This offence involved a single incident of inappropriate touching. However, once again the victim was a vulnerable adolescent boy, with body image issues, seeking advice from someone he trusted. Mr. Gaglardi's conduct was manipulative, and it was a serious betrayal of trust. A sentence of 15 months in jail is required.
- [118] On count 8, indecent assault of DP, the Crown recommends a sentence of 24 to 30 months in jail. The defence says 12 months. This offence involved a single incident, but the incident involved an elaborate ploy built upon Mr. Gaglardi's professed expertise and academic interest, used to exploit and violate the sexual integrity of an adolescent boy. The betrayal of trust was profound. The impacts on the victim were immediate, and also prolonged and insidious. A jail sentence of 21 months is required.
- [119] On count 10, indecent assault of KH, the Crown suggests a 24 to 30 months jail sentence. The defence says 12 months. There were two instances in which Mr. Gaglardi intruded on KH's sexual integrity. Again, the victim was vulnerable, and Mr. Gaglardi used his position in the church and his relationship with KH to opportunistically prey upon him. The impact on the victim was once again substantial. A jail sentence of 21 months is required.
- [120] On count 12, sexual assault of ML, the Crown asks the Court to impose a sentence of 24 to 36 months in jail. The defence argues for a sentence of 12 months. The offence involved three separate instances of improper sexual contact. The victim was not a child, but had just turned 18, and was extremely vulnerable, seeking help from Mr. Gaglardi for a drug dependency. Mr. Gaglardi's conduct was manipulative and exploitative. A fit sentence for this count is 16 months in jail.
- [121] On count 13, sexual exploitation of GA, the Crown suggests a 24 to 36 month jail sentence. The defence submits that a fit sentence is 12 to 18 months. There were two instances of sexually offensive behaviour. The evidence at trial reflects that Mr. Gaglardi used his status within the Hillside church, and his purported educational background and professional interests to draw GA into a bizarre ritual that was presented to GA as some kind of a research project. Mr. Gaglardi paid GA to participate. In the course of that project, Mr. Gaglardi engaged in increasingly intrusive examinations of GA's body, leading ultimately to inappropriate sexual touching. There was also the bizarre coffee enema procedure. Mr. Gaglardi's conduct was exploitative and manipulative. Again, the victim's trust was betrayed. Some years later, GA tried to raise the issue with Mr. Gaglardi in an effort to heal the relationship, but Mr. Gaglardi sloughed him off. A sentence of 15 months in jail is required.
- [122] On count 15, sexual exploitation of JU, the Crown argues for a sentence of 24 to 36 months in jail. The defence suggests a sentence of nine to 12 months. The offence involved a single instance of inappropriate sexual touching. However, the incident was intrusive of the victim's sexual integrity, and the victim was an extremely vulnerable teenager. He felt isolated and in need of companionship and emotional support. He placed his trust in Mr.

Gaglardi, who betrayed it, leaving JU heartbroken at the time. A sentence of 16 months is required on this count.

- [123] On count 20, sexual assault of AH, the Crown recommends a sentence of 12 to 18 months in jail. The defence suggests a sentence of two to six months. The offence involved two instances of sexual touching. The victim, while an adult, was once again vulnerable, lacking in self confidence and seeking assistance from a qualified professional. He placed his trust in Mr. Gaglardi, who then pressured him to submit to increasingly intrusive, bizarre therapeutic techniques that intruded on the victim's sexual integrity. AH's victim impact statement indicates that he has been gravely affected by Mr. Gaglardi's conduct in abusing the trust that AH placed in him. A fit sentence for this count is 10 months in jail.
- [124] On count 23, sexual assault of CP, the Crown recommends an 18 to 24 month jail sentence. The defence says four months. This count involved two instances of sexual touching. The victim was a young man who sought out Mr. Gaglardi's services as a counsellor. On two of the relatively few instances when they met in person, Mr. Gaglardi touched him sexually, once during a massage, and once during a peculiar and entirely unnecessary or gratuitous anal swabbing exercise that I found to be a ruse. I find that a sentence of eight months in jail is required for this count.
- [125] On count 25, sexual assault of JK, the Crown suggests a sentence of six to 12 months in jail. The defence position is two months. This offence involved a single incident of sexual contact. JK, having experienced trauma in the past, sought Mr. Gaglardi's assistance as a counsellor. Mr. Gaglardi said he would counsel JK for free as part of some sort of study. JK trusted Mr. Gaglardi because of what he was told about his education and professional experience. Mr. Gaglardi abused that trust and took advantage of JK's vulnerability. JK has suffered lasting impact from the abuse, requiring ongoing counselling to come to grips with the manner in which Mr. Gaglardi abused the relationship. A fit sentence for this count is five months in jail.
- [126] Given that each offence relates to a separate victim and involves a separate transaction or series of events, the sentences must be consecutive. The total sentence is 155 months, which works out to 12 years and 11 months.
- [127] However, that is not the end of the exercise. I must go on to consider the principle of totality. Where consecutive sentences are imposed, the Court must take one last look at the total sentence to ensure that it properly reflects the offender's overall moral blameworthiness, and is not crushing. See Friesen at para. 157, citing *R. v. Punko*, 2010 BCCA 365 at para. 93; see also *R. v. Li*, 2009 BCCA 5 at para. 27-28.

[128] In Mr. Gaglardi's case, I would not necessarily consider a jail sentence of almost 13 years to be completely out of line with the offender's overall moral blameworthiness, but looking at Mr. Gaglardi's personal circumstances I do have concerns about whether a sentence of that duration would be crushing due to his age and health situation. As explained in Swope at para. 33, time in jail may be "particularly harsh" for an elderly offender as the opportunity for liberty slips away with age.

[129] Mr. Gaglardi is 78 years old. There is no evidence that his life expectancy is significantly curtailed by illness, however a sentence of almost 13 years may well approximate his life expectancy. Taking this into account, I agree with the submission of both parties that the sentence should be reduced to account for Mr. Gaglardi's advanced age. In Swope, the sentencing judge reduced the sentence for a 78 year old offender by half. The Crown and defence both suggest a similar approach in the case at bar, and I agree. While this is a substantial reduction in the overall sentence, it is in my view necessary to avoid the injustice of a sentence that would be crushing to Mr. Gaglardi.

[130] In the result, I would reduce the overall sentence to 78 months, or 6 years and six months. To accomplish this, I will reduce the length of each sentence by more or less one-half, rounded off in some cases to avoid partial months, as follows:

- (a) On count 3, the sentence is 10 months in jail, consecutive to all other counts.
- (b) On count 5, I impose four months in jail, consecutive to all other counts.
- (c) On count 6, I impose seven months in jail, consecutive to all other counts.
- (d) On count 8, I impose 11 months in jail, consecutive to all other counts.
- (d) On count 10, I impose 11 months in jail, consecutive to all other counts.
- (e) On count 12, I impose eight months in jail, consecutive to all other counts.
- (f) On count 13, I impose seven months in jail, consecutive to all other counts.
- (g) On count 15, I impose eight months in jail, consecutive to all other counts.
- (h) On count 20, I impose five months in jail, consecutive to all other counts.
- (i) On count 23, I impose four months in jail, consecutive to all other counts.
- (j) On count 25, I impose three months in jail, consecutive to all other counts.

Ancillary Orders

[131] I hereby order that as part of his sentence Mr. Gaglardi is to provide a DNA sample pursuant to s. 487.051 of the Criminal Code.

[132] There will also be an order pursuant to s. 490.012 of the Criminal Code that Mr. Gaglardi is to register under the Sex Offender Information Registration Act for a period of 20 years.

"Riley J."

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