

CANADA / JUDGMENT

R. v. Hothi

2025 BCSC 869

COURT

Supreme Court of British Columbia

DECIDED

25 April 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 869 R. v. Hothi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hothi,

2025 BCSC 869

Date: 20250425

Docket: X085875-1

Registry: New Westminster

Rex

v.

Gulbag Singh Hothi

Restriction on publication: A publication ban has been mandatorily imposed under

s. 486.4 of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify the complainant, referred to in this judgment by the initials S.B.

This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Justice Ormiston

On appeal from: An order of the Provincial Court of British Columbia, dated September 13, 2024 (R. v. Hothi, Surrey Docket 252346-2-C).

Oral Reasons for Judgment

at Summary Conviction Appeal

Counsel for the Crown (Appellant):

N.M.D. Reithmeier

Counsel for the Accused (Respondent):

G. Arnet-Zargarian

S.E. Taylor-Robins

Place and Date of Hearing:

New Westminster, B.C.

March 12, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 25, 2025

Table of Contents

Standard of Review.. 4

Issues. 5

Analysis. 6

1. Consideration of Moral Blameworthiness. 6

2. Alleged Factual Errors. 11

(i) Victim Impact 12

(ii) The offender's immaturity. 15

(iii) Consideration of breach of trust 16

(iv) The shorter term of offending. 19

(v) Conclusions Regarding Factual Errors. 20

3. Penological Paradox. 21

4. Was the Sentence Demonstrably Unfit?. 21

5. Sentencing Conclusions. 24

- [1] THE COURT: The respondent, Gulbag Hothi, pled guilty to luring a child under the age of 16 by means of telecommunication for the purpose of committing a sexual offence with respect to that person, contrary to s. 172.1(1)(b) of the Criminal Code of Canada, R.S.C. 1985, c. C-46 [Criminal Code]. The victim was 15-year-old S.B.
- [2] At the time of the offence in early 2023, S.B. was a student at an alternative education centre for students who are at risk of leaving school. She came to know the respondent through his work at the learning centre where he was completing his practicum for the Child and Youth Care program at Douglas College. In this capacity, the respondent assisted teachers and support workers including interacting with students in their educational environment, as well as on field trips. The respondent was also responsible for having individual meetings with students to relay concerns or needs to their assigned support worker. The respondent was 27 years old.
- [3] S.B. and the respondent had casual interactions at the learning centre before becoming mutual contacts on the SnapChat social media platform where they started messaging each other. This was in the final week of the respondent's practicum. Shortly after this communication began, the respondent started sending the victim highly sexualized messages ranging from comments about her appearance to crude indications that he wanted to engage in sexual conduct.
- [4] The respondent attempted to meet with S.B. in person. She told him she was sick and that she could not meet with him because she was 15. At one point, he invited her for "dinner and drinks" at his place. In the week after the messaging began, S.B. attended school once, and on that day the respondent tried to orchestrate an in-person meeting between them at the learning centre. S.B. resisted and said that her teacher would not let her go. The respondent told her to ask her teacher for permission, but she continued in her refusal. S.B. stopped attending school for several days because she was afraid something might happen with the respondent.
- [5] Once his practicum ended, the respondent continued messaging S.B., sending her numerous sexually explicit messages. In no uncertain terms, he encouraged the victim to engage in various sexual acts with him. He also sent her photographs that he said were of another teenaged student who wanted to have sex with him. One photo depicts the face of a teenage girl, the other, female genitalia. The respondent also sent the victim a video of himself recorded in the learning centre support room saying, "I'm bored, I want you, I miss you", concluding with a kissing gesture.
- [6] No sexual encounter ever did occur between the respondent and the victim. Four days after Mr. Hothi's practicum ended, S.B. reported his messages to her principal who notified the police. Mr. Hothi was sentenced to an 18-month Conditional Sentence Order ("CSO"), a 12-month probationary term, a Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA] order and other ancillary orders. He has been serving this CSO, since September 13, 2024 and has complied with all conditions.

- [7] At the sentencing hearing, Crown counsel sought 12 months' incarceration followed by two years of probation in addition to the ancillary orders. The issue at sentencing was whether the custodial sentence should be served in the community as a CSO. Defence counsel proposed a CSO in the range of 18 to 24 months less a day, with an invitation to the Court to consider a 90-day intermittent sentence.
- [8] The appellant argues that the sentence imposed is demonstrably unfit, because a CSO in this case is not consistent with the fundamental purpose and principles of sentencing. The appellant also submits the sentencing judge made errors in principle that impacted the sentence imposed.

Standard of Review

- [9] The standard of review applicable to sentencing decisions is highly deferential. An appellate court can only interfere with the sentence if:
1. the sentencing judge made an error in principle that has an impact on the sentence, or
 2. if the sentence is demonstrably unfit.
- [10] With respect to the first ground, an error in principle includes errors in law and a failure to consider a relevant factor, or the overemphasis of a relevant factor. See *R. v. Milne*, 2021 BCCA 166 at para. 44. An error in principle can also include errors of fact and, in such cases, the factual error must be both palpable and overriding.
- [11] The standard of review for appeals against sentence is deferential on issues of fact and on the exercise of discretion within appropriate sentencing ranges. If an error in principle has impacted the sentence or if the sentence is demonstrably unfit, an appellate court may inquire into the fitness of the sentence and replace it with a sentence considered to be appropriate, giving less deference to the sentencing judge. However, in so doing, the court must defer to the sentencing judge's findings of fact and identification of aggravating and mitigating factors, except to the extent that they are affected by an error in principle: *R. v. J.F.D.V.*, 2025 BCCA 4, at paras. 36-38.
- [12] While errors of law and palpable overriding errors of fact provide a gateway to review, the end result must still be a proportional outcome within the meaning of s. 718.1 of the Criminal Code.

Issues

- [13] The issues to be decided are as follows:
1. Did the Court fail to consider the offender's moral blameworthiness?
 2. Did the Court commit palpable and overriding factual errors relating to victim impact, breach of trust, the respondent's maturity and the duration of the offending?

3. Did the Court consider the length of sentence in isolation from its form?
4. Was the sentence imposed demonstrably unfit?

Analysis

1. Consideration of Moral Blameworthiness

[14] The fundamental principle of sentencing is proportionality. Determining a proportionate sentence requires the sentencing judge to consider both the seriousness of the offence and the degree of responsibility or moral blameworthiness of the offender. The appellant submits that the sentencing judge failed to evaluate the offender's degree of moral blameworthiness in the sentencing analysis.

[15] Delivering reasons for sentence, the Court stated:

[40] The degree of responsibility of the offender refers to the offender's culpability as reflected in the essential elements of the offence, especially the fault component, and any specific aspects of the offender's conduct or background that tend to increase or decrease the offender's personal responsibility for the crime. I will address the degree of responsibility of Mr. Hothi when I address the aggravating and mitigating circumstances of the offence and the offender.

[50] When determining a fit and appropriate sentence both the gravity of the offence and the moral blameworthiness of the offender is key to setting a proportionate sentence. This requires identifying both mitigating and aggravating factors. Mitigating factors will include whether the offender has pleaded guilty to the offence; whether the offender has expressed genuine remorse or gained insight into the offence; and whether the offender has taken rehabilitative steps such as counselling or treatment. The personal circumstances of the offender, such as the offender's age at the time of the offence, family stability, mental health or substance use disorder that imposes cognitive limitations reducing culpability. See [Bertrand] Marchand, paragraphs 72 to 73.

[16] There is no question that the sentencing judge was well aware of the essential role moral blameworthiness plays in the proportionality analysis. The question is whether this particular offender's moral culpability was evaluated. In the above-noted passage, the sentencing judge indicates that the respondent's degree of responsibility would be addressed in the consideration of aggravating and mitigating factors.

[17] The Court goes on to cite the following factors:

[18] In mitigation, the Court describes the respondent as a first-time young offender who lived an otherwise pro-social life. The Court references his guilty plea, expressions of remorse, support of immediate and extended family and his compliance with judicial interim release. The Court puts emphasis on the respondent's post-offence behaviour including engagements with counselling and continued education.

- [19] The Court recognizes the following aggravating factors: an aspect of grooming involving manipulation; the use of romantic language; the normalization of suggested sexual activity; the repeated nature of the offending; the age of the victim and the gap between her age and his own; and finally, the victim's vulnerability including an aspect of breach of trust in how the offence was committed.
- [20] Of this list of aggravating and mitigating factors, several are capable of impacting an assessment of the respondent's moral blameworthiness. However, the ultimate conclusion regarding the respondent's degree of responsibility is not expressly stated, nor is there an explanation or context in the reasons from which it could be reasonably inferred. The respondent submits there are two reasons why it should be obvious that the sentencing judge decided Mr. Hothi's moral blameworthiness was high. First, because such a finding is presumptive; and second, because it was undisputed at the sentencing hearing. I will address these arguments in turn.
- [21] First, with respect to the submission that the respondent's moral blameworthiness was presumptively high, counsel relies on the fact that the sentencing judge was clearly aware of the importance of the Supreme Court of Canada's decisions in *R. v. Friesen*, 2020 SCC 9 and *R. v. Bertrand Marchand*, 2023 SCC 26. In *Bertrand Marchand* at para. 35, the Court states that "[any] adult's manipulation of a child to satisfy their sexual urges is highly blameworthy conduct." In *Friesen*, the Court establishes that in sexual offences involving children, the harmfulness and blameworthiness of an offender's conduct must be closely examined in the determination of a fit sentence, at paras. 88-90.
- [22] The sentencing judge ultimately concluded the offence Mr. Hothi committed was serious. However, acknowledging the general seriousness of sexual offending must also be attended by an analysis of the moral blameworthiness of the specific offender and the individual circumstances that give rise to the finding of seriousness in each case: *R. v. C.K.*, 2023 BCCA 468 at para. 58. While the sentencing judge makes clear that the offence was serious, these statements standing alone do not resolve the tensions between the aggravating and mitigating factors, and do not disclose the Court's ultimate conclusion about the offender's degree of responsibility.
- [23] The sentencing judge does identify factors that weigh in favour of finding the respondent's degree of responsibility is elevated. However, two of the most potent aggravating circumstances are also found to be "tempered," specifically breach of trust and impact on the victim. The Court also recognizes mitigating circumstances capable of supporting the inference that the respondent's moral culpability is reduced, such as emotional immaturity. The Court emphasizes the respondent's engagement with counselling which is significant, given the argument advanced by defence counsel at the sentencing hearing that this counselling assisted the respondent in grappling with emotional deficits stemming from his early exposure to domestic violence.

- [24] The only place the sentencing reasons fall short is in the resolution of these differences relevant to the respondent's moral culpability. This evaluation and analysis was essential to the test the sentencing judge set out to follow in *R. v. Maslehati*, 2024 BCCA 207. While I agree with the respondent's submission that the reasons in this case are distinguishable from those in *Maslehati* where moral blameworthiness was not even mentioned, there is an essential similarity in the fact that moral blameworthiness was not analyzed by the Court: *Maslehati*, at paras. 139-141. In so doing, the sentencing judge here fell into error.
- [25] The British Columbia Court of Appeal found in *R. v. C.K.* that determining whether moral culpability is attenuated involves an examination of an offender's motive, actions, and other factors that inform their degree of responsibility. An offender's acceptance of responsibility and remorse after the fact are appropriately considered mitigating circumstances at sentencing, but they do not obviate the need to analyze moral blameworthiness at the time of the offence. In *R. v. C.K.*, the Court describes the required analysis as a "gauging" of the essential substantive elements of the offence including the offence's mens rea, the offender's conduct in the commission of the offence, the offender's motive for committing the offence, and aspects of the offender's background that increase or decrease their individual responsibility for the crime, including the offender's personal circumstances and mental capacity: *R. v. C.K.*, at paras. 69-73.
- [26] In *R. v. C.K.*, the Court went on to find (at para. 73) there was "no indication the judge analytically grappled with [the] various factors to properly assess their impact on the respondent's blameworthiness or the length and form of a fit sentence." While moral blameworthiness may be presumptively high for a serious child-luring offence, the appellant has established that the reasons for sentence here reflect this same kind of error.
- [27] The second argument advanced by the respondent in submitting that it should be obvious that the sentencing judge found moral culpability to be high, is that this aggravating factor was never in dispute. As such, the respondent says a holistic reading of the record of proceedings shows that the reasons for sentence started from the premise that the offender's moral blameworthiness was high. In this context, the respondent submits that the sentencing judge's remarks about factors that could attenuate moral blameworthiness were a focused response to situating this particular sentencing in the jurisprudence, and specifically meant to answer the question of whether or not a CSO could achieve the objectives of sentencing.
- [28] On a close examination of the sentencing proceedings, I cannot find that the extent of the respondent's moral blameworthiness was an entirely settled issue. While defence counsel conceded that the offence itself was serious and that his client's conduct was blameworthy, he also made several arguments that could lead a court to find Mr. Hothi's degree of responsibility was reduced. For example, defence submitted that the breach of trust in this case was lower on the spectrum, and that the victim's vulnerability was not, in itself, a distinct factor from the breach of trust. He made relatively involved submissions about the respondent's exposure to domestic violence as a child, and argued there was a connection

between the offender's upbringing and the offending conduct.

- [29] The reasons for sentence suggest these defence submissions may have been preferred over the Crown's assertion that the respondent's moral culpability should not ultimately be reduced by these factors. In addition to the submissions made by the defence, the sentencing reasons reveal the Court found other factors that could favour a finding of diminished moral culpability, such as the offender's emotional immaturity and the limited impact of the offence on the victim.
- [30] However, it is not clear whether these factors ultimately convinced the Court that the respondent's moral culpability was reduced, or to what degree given the particular circumstances of this offence. As such, I am unable to accept the respondent's submission that the sentencing reasons were premised on the uncontroverted acceptance that Mr. Hothi's degree of personal responsibility was high.
- [31] The respondent also suggests that even if there is no conclusory statement in the reasons for sentence about the offender's degree of responsibility, the sentencing judge ultimately imposed the sentence that he did because of the compelling mitigating circumstances at play, not because he found the respondent's moral culpability to be reduced. This submission flows from the sentencing judge's reliance on *R. v. Maslehati* at para. 54 of the reasons for sentence: "In the absence of diminished moral blameworthiness or compelling mitigation, in a case with aggravating circumstances will generally render a conditional sentence inconsistent with the fundamental purpose and principles of sentencing." [Emphasis added.]
- [32] On my reading of *Maslehati*, it would be an error to find that a CSO could be imposed for an offence of this sort where no definitive findings are made about moral culpability. The passages from *Maslehati* cited above, make clear how critical the moral blameworthiness analysis is in crafting a fit sentence for sexual offences. In my view, determining whether the mitigating circumstances are "compelling" will necessarily involve a broad consideration of all mitigating and aggravating factors, including an evaluation of moral blameworthiness.
- [33] I agree with the respondent that the sentencing decision must be read holistically and in the full context of the proceedings. Doing so shows no lapse in diligence when it comes to identifying moral blameworthiness as a factor, or in identifying various other factors that could impact this offender's degree of responsibility. However, neither the submissions before the sentencing judge, nor the reasons given express the Court's final conclusion regarding the degree of Mr. Hothi's moral blameworthiness or how it was calibrated in relation to the aggravating and mitigating factors. I am satisfied the appellant has established this constitutes grounds for review, given the central importance of moral blameworthiness in this particular sentencing.

2. Alleged Factual Errors

[34] The appellant submits the sentencing judge made errors of fact that are palpable and overriding in relation to the following finding:

1. the impact of the crime on the victim;
2. that the offender was immature;
3. that the breach of trust was not properly considered; and
4. that the severity of the crime was lessened by the shorter period of offending.

[35] Before examining each of these factual findings, I will emphasize again the high and deferential standard to be applied when reviewing findings of fact. The test is whether the appellant proves palpable and overriding error. A palpable error is one that is obvious and plainly seen. Such errors are aptly described as a "beam-in-the-eye" of the reviewing justice, and not "a needle in a haystack": *Benhaim v. St-Germain*, 2016 SCC 48 at para. 108. Overriding error must be one that goes to the "very core" of the outcome of the case: *Benhaim* at para. 38. Factual findings will not be disturbed on appeal unless they manifest errors that are both palpable and overriding.

[36] Turning to the errors alleged here:

(i) Victim Impact

[37] The appellant submits that the sentencing judge made erroneous findings about the extent of the impact this crime had on the victim, and points particularly to para. 28 of the Reasons which state:

Crown counsel have filed as Exhibit 3 a victim impact statement authored by S.B. Mr. Hothi's behaviour has caused fear and anxiety in S.B. as well as a concern for other young women, stemming from Mr. Hothi's comments regarding other students. Fortunately, it would appear that the effect on S.B. has not been long lasting and she will positively move forward in her life.

[38] The sentencing judge makes these remarks regarding victim impact in the context of listing factors that "tempered" the seriousness of the offence. As such, the appellant submits the Court diminished the impact of the offence on the victim without any evidentiary basis to do so. The respondent argues that the Court recognized the negative impact on the victim and that the comments about future impact of the offence are an extraneous and hopeful sentiment.

[39] In support of his position, the respondent points to the dialogue between the Court and the offender at the conclusion of sentencing submissions where the Court emphasizes that harm caused to this victim is at the heart of the sentencing decision. I have considered the reasons for sentence in the context of the sentencing proceedings, however the issue, in my view, is not whether the Court appreciated and accounted for the fact that this offence had a negative impact on the victim. That is abundantly clear from the above-noted passage and the Court's remarks about it in the course of sentencing submissions. The question is

whether there was an evidentiary basis for the sentencing judge to find that the effect of the offence has not been or will not be long-lasting.

- [40] While the Court introduced its findings tentatively by saying that "it would appear" the victim had overcome or will overcome the negative impact, I cannot accede to the respondent's submission that this was not a material finding of the Court. It is obvious that the sentencing judge applied this optimistic conclusion in the sentencing analysis and that it helped inform the decision that a CSO was a fit sentence in this specific case. If the purpose of the sentencing judge's remarks were to simply state the conclusion that the offence had a negative impact on the victim, it would not make sense for the Court to have cited it as a reason to find the seriousness of the offence had been tempered.
- [41] Both the evidence before the Court and the case law about child luring make clear that there was an impact on the victim. The victim impact statement written by this young person is brief but poignant. The offending set her back in her studies. It did so because the offending scared her. She felt like the respondent was "after her" at the school and this is well-founded in the predatory way he persisted in trying to orchestrate an in-person meeting despite the victim's resistance. This made her anxious and fearful. The extent of the impact on the victim is also reflected in her stated fear for other potential victims. This kind of anxiety about future victims is consistent with the psychological harm flowing from child-luring offences described in both Friesen and Bertrand Marchand.
- [42] While the evidence before the Court may not exclude the possibility of the kind of hopeful finding made by the sentencing judge, it does not support such findings either. I agree with the respondent that the judge was entitled to compare the degree of victim impact to other cases that may have been more aggravated. However, the basis on which the Court appears to distinguish the impact on this victim is not developed or supported by the record. It is clear from the judicial remarks during the sentencing hearing and the cases relied upon, that the Court was aware child luring can constitute a form of psychological sexual violence that has the potential to cause serious harm and that can be more pervasive and permanent than physical harm. It is clear that the Court recognized the clear message sent in Friesen that sexual offences against children cause significant harm that may take many years to manifest: Friesen at paras. 3-5.
- [43] However, there is no bridge offered to the reader between the comments about potential future harm made by the judge during the sentencing submissions, and the reasons for sentence which rely in part on the probability, or even the hope, that such harm would not occur in this case. The Court's finding that victim impact in this case was somehow lesser or limited cannot be harmonized with the evidence of harm in the victim impact statement. Even in the context of the sentencing judge distinguishing the victim impact from other cases, it would be inconsistent with the decision in Friesen to presume that offences of sexual exploitation like luring do not engender harm that is independent from the kind of harm that could have been caused if the offender's attempts to physically offend against a child had been successful.

[44] As the Court in Friesen warns, and as the sentencing judge also states, in many cases it will be impossible to determine whether these forms of harm have occurred at the time of sentencing, particularly where the victim is still young. Ultimately, I cannot find the Court heeded the direction in Friesen (at para. 84) that sentencing judges "must always take into account forms of potential harm that have yet to materialize at the time of sentencing but that are a reasonably foreseeable consequence of the offence and may in fact materialize later in childhood or adulthood. To do otherwise would falsely imply that a child simply outgrows the harm of sexual violence."

[45] In conclusion, the sentencing judge's view that the degree of impact on the victim decreased the seriousness of the offence is a palpable error.

(ii) The offender's immaturity

[46] In the recital of mitigating circumstances, the sentencing judge includes a description of the respondent as "a first-time young offender". I agree with counsel that characterizing a 27-year-old as youthful could be the subject of reasonable debate. However, the issue raised on this appeal is whether the sentencing judge properly discounted the seriousness of the offence by finding that the age gap between the offender and the victim was narrowed by the respondent's youthfulness or immaturity. The basis provided in the reasons for this conclusion is Dr. Thomas' observation that the respondent presented as "emotionally vulnerable and naïve, even."

[47] There is no error alleged in the Court deciding that immaturity or youthfulness are capable of being mitigating factors for an offender facing incarceration. The issue is whether the Court erred in making such a finding on the facts of this case. The appellant emphasizes that Dr. Thomas' remarks were made in the context of opining that the respondent could be vulnerable to other inmates if he were to be incarcerated. The Court then applies this opinion to an analysis of the age gap of 12 years between the respondent and the victim. This suggests the Court found the respondent's "immaturity" to be a factor that reduced the otherwise high moral blameworthiness that would attend such a significant age gap.

[48] I agree that the judge's reasons disclose a palpable factual error. Being vulnerable or naïve in a prison population is different than being vulnerable and naïve in ways that could come to bear on the commission of this offence when the respondent was not in custody. Furthermore, the sentencing reasons do not explain why the Court inferred the doctor's remarks indicated the kind of immaturity that could reduce the extent of the respondent's moral blameworthiness in targeting a victim so much younger than himself. The error blossoms in light of a significant body of evidence that the respondent did not demonstrate immaturity or any kind of diminished cognitive or social skills that would attenuate the significant age gap between him and the victim.

[49] Mr. Hothi is described by several family members as remarkably mature. He has maintained employment, education and volunteer positions that require responsibility and maturity. His personal relationship history is one of experience, not innocence. The psychological

assessments do not raise concerns about his intellectual function. In the absence of reasons for arriving at the stated conclusion, I must find palpable factual error in the judge's determination that the offender's immaturity could narrow the highly aggravating age gap and power differential between the respondent and the victim.

(iii) Consideration of breach of trust

[50] While the Court references breach of trust as a sentencing factor, the appellant submits the force of this aggravating circumstance was erroneously limited by the Court. I agree; however, not for the reasons submitted by the appellant. The appellant points specifically to the following language in the reasons for sentence:

while there is an aspect of breach of trust in this case, Mr. Hothi was a practicum youth worker whereas in other cases the offender was a teacher of the victim.

[51] I agree with the respondent's submission that focusing on the word "aspect" does not necessarily demonstrate an obvious error. This is a turn of phrase the sentencing judge uses a few times in the reasons and during the sentencing hearing. It is subject to a deferential interpretation. Nevertheless, the use of the word "aspect" does advance the point made by the Court in para. 56 of the reasons for sentence, that the breach of trust in this case was lower on the spectrum than in some of the other cases the Court considered.

[52] While I accept that the reasons demonstrate the Court considered breach of trust to be an aggravating circumstance, there is reason to find that the magnitude of this factor was not given full expression in the sentencing analysis. First, the Court's reference to "an aspect of breach of trust" flows from the recitation of the aggravating factors in the previous paragraph which ends with reference to the vulnerability of the victim. It is important to note that in sentencing submissions, defence counsel argued that the vulnerability of the victim was indistinct from the offender's breach of trust. The tenor of submissions were that finding aggravation in breach of trust as well as the vulnerability of the victim would overemphasize the offender's moral blameworthiness.

[53] With respect to the difficult task of defence counsel at a sentencing of this sort, I find this submission detracts from the compounded and weighty moral blameworthiness of this offender. It is aggravating that the respondent was a support staff in the victim's learning environment and that he violated her trust in the supports that were supposed to safeguard her well-being. It is further aggravating that she was a vulnerable student. She was at this particular school because she was compromised. The paucity of information about her challenges does not negate her increased vulnerability generally, which was exploited by the respondent when he chose her as his victim.

[54] The aggravating impact of this additional vulnerability, beyond what is inherent in the victim being a child and the offender being an adult, became manifest when the offending led the victim to stop attending school. This was the very thing the respondent was supposed to help prevent in his role as her support worker. This distinct aggravating factor

increases the respondent's moral culpability dramatically. While the respondent was tasked with addressing the victim's vulnerability, instead he exacerbated it. He treated the victim like an object to gratify his sexual desire and was well aware that it was entirely wrong. He says as much in the messages when he claims to have fallen out of contact because he was worried about consequences that may befall him as a result of their communications. Unfortunately, it is not clear from the reasons for sentence that the sentencing judge separated themselves from counsel's conflation of vulnerability and breach of trust.

- [55] Secondly, while both counsel agree that the respondent's position as the victim's youth worker places him lower on the breach of trust spectrum than a teacher, this reasoning is inconsistent with a victim-centred approach to the concept of breach of trust. Ultimately, the distinction the sentencing judge draws between the respondent and a teacher supports the appellant's position that breach of trust was not given full expression in this sentencing decision.
- [56] While the Court in Friesen recognizes that trust relationships should not all be treated alike at para. 126, the Court goes on to say:
- [126] Any breach of trust is likely to increase the harm to the victim and thus the gravity of the offence. As Saunders J.A. reasoned in *D.R.W.*, the focus in such cases should be on "the extent to which [the] relationship [of trust] was violated" The spectrum of relationships of trust is relevant to determining the degree of harm. A child will likely suffer more harm from sexual violence where there is a closer relationship and a higher degree of trust between the child and the offender ... This is likely to be the case in what might be described as classic breach of trust situations, such as those involving family members, caregivers, teachers, and doctors, to mention a few. [Emphasis added]
- [57] Practicum youth workers may not be on this list, but an examination of the relationship between this particular offender and this particular victim reveals no material difference in principle. It is not clear how the degree to which the relationship of trust was violated in this case would have been any different if the offender had been the victim's teacher as opposed to acting in the position of her support worker at school. The evidence in the record and the reasons given do not disclose why the victim may have had a closer relationship with or a higher degree of trust in a teacher than a support worker.
- [58] While a teacher may be inferred to have more authority, the contents of the agreed statement of facts support the logical conclusion that the victim would know the offender could share information about her with her teacher. Even if the respondent did not have these kind of one-on-one meetings with the victim herself, it was part of his job to do so and pass along relevant information about support needs to others. Essentially, he was acting as the teacher's assistant.

- [59] I cannot discern a logical reason to find, from the perspective of the victim, that there would have been any difference between a teacher and an educational assistant when it comes to the exploitative nature of the crime and the increased accessibility the respondent had to her in a place where she should have felt safe. This is particularly apparent on the face of the impugned messages themselves which are attached to the agreed statement of facts.
- [60] A breach of trust is aggravating because the offender exploits a relationship of trust or authority in order to commit the offence in question. The erosion of breach of trust as an aggravating factor in this case compounds the factual error about the limited impact of the offence on the victim. These two factors are closely connected. As Friesen points out, a child will likely suffer more harm from sexual violence where there is a closer relationship and a higher degree of trust between the child and the offender. The sentencing judge's suggestion that the breach of trust here was less serious than so-called 'classic breach of trust situations', cannot be inferred from the evidence that formed part of this record.
- [61] While the foregoing may be better framed as an error of mixed fact and law, I am satisfied the appellant has established reviewable error with respect to the extent to which breach of trust was considered in determining a fit sentence.

(iv) The shorter term of offending

- [62] The impugned messages in this case spanned approximately 12 days. The sentencing judge observed (at para. 57): "the length of time and the number of messages over which Mr. Hothi communicated during the offence was considerably shorter and fewer than other cases, for example Bertrand Marchand."
- [63] I cannot accede to the appellant's submission that this aspect of the reasons reveal a factual error. It is not contentious that the length of time over which the offence took place was shorter than in other cases being considered. The appellant's argument that the sentencing judge failed to consider why the offending stopped is at odds with their submission at the sentencing hearing that the length of the offending in Bertrand Marchand was "more aggravating".
- [64] I agree with the respondent's submission that the sentencing judge's remarks go no further than the Crown's concession. The appellant also asserts the sentencing judge failed to account for the fact that offending only stopped when the respondent was arrested. I also agree with the respondent that the Court never found this to be a fact, nor is it necessarily supported by the record. The appellant's submission that the sentencing judge focused on the quantitative as opposed to qualitative nature of the offending is an issue that engages moral culpability which will be discussed in more detail below.

(v) Conclusions Regarding Factual Errors

- [65] I find the appellant has established the sentencing judge made factual errors regarding the impact of the offence on the victim, the immaturity of the offender and the extent of the breach of trust. For the reasons given, these stand out as palpable. I also find them to be overriding; that is, I am satisfied the errors played a significant role in the ultimate decision to grant a CSO as opposed to incarceration.
- [66] The sentencing judge correctly identified the central importance of the impact of the offence on the victim, however, discounting the seriousness of the offence because of an erroneous conclusion that the victim will not be further impacted by the offending, impacts a critical factor in the analysis of whether the fundamental principles and purposes of sentencing could be met by a CSO.
- [67] Similarly, the moral culpability of the offender is an essential ingredient in this sentencing analysis, and it is engaged by the erroneous basis for finding the age gap between the victim and the offender was less significant than other cases. This error is compounded by the failure to describe the moral blameworthiness analysis undertaken by the Court, as I have reviewed at the outset of these Reasons. To a lesser extent, the Court's finding regarding immaturity also touches on the Court's decision that the respondent being a "youthful offender" was mitigating. This youthfulness is one of the six factors enumerated by the Court in determining that the mitigating circumstances in this case were compelling enough to make it one of the rarest of cases justifying a CSO.
- [68] In conclusion, I find the appellant has established palpable and overriding errors.

3. Penological Paradox

- [69] For the reasons set out in the respondent's detailed submissions, I do not find that the sentencing judge erred by engaging in the kind of rigid two-step process resulting in the paradox identified in *R. v. Proulx*, 2000 SCC 5. The practice the Court cautions against in *Proulx* occurs where a sentencing judge first determines that a fixed term of imprisonment is fit without considering where it will be served, and then determines whether that same term can be served in the community without regard to how the venue for the sentence will impact the proportionality analysis. The sentencing judge did not identify a fixed term of imprisonment. It is clear from reviewing the reasons for sentence and judicial comments made in the course of submissions that the judge recognized a range of possible sentences between one and two years less a day, at paras. 60-61 of the reasons for sentence.
- [70] The judge also made remarks in the course of the sentencing hearing indicating a clear understanding of the exact point made in *Proulx*, that imposing a longer CSO than an appropriate carceral sentence can, in some instances, result in a fit sentence.

4. Was the Sentence Demonstrably Unfit?

- [71] To establish the sentence is demonstrably unfit, the appellant must establish that it is "clearly unreasonable, clearly inadequate, or represents a substantial marked departure". This is a very high threshold: *R. v. Lacasse*, 2015 SCC 64 at para. 52. The sentence can also be assessed by asking whether it is an unreasonable departure from the principle of proportionality considering similar cases and the particular offence and offender: *Lacasse* at paras. 53-54.
- [72] In this case, the sentencing judge acknowledged several aggravating factors. These led to a finding that the offence was "serious" and grave: paras. 55-56. The Court recognized that the presence of aggravating factors does not preclude a CSO and was acutely aware that a CSO is an exceptional sentence for offences of this sort: para. 70. The judge reasonably relied on the prevailing appellate authorities in finding that in rare cases of diminished moral culpability or compelling mitigation, a CSO could be a fit sentence even where the offence was aggravated by other factors. However, it is the Court's ultimate conclusion that the mitigating circumstances in this case were "compelling" that is problematic.
- [73] In my view, this analysis requires some degree of weighing between the aggravating and mitigating factors. It cannot be limited to an enumeration of a number of mitigating factors. In deciding this issue of whether the mitigating circumstances were compelling, the sentencing judge does not engage with the high moral blameworthiness apparent in the accused's conduct, particularly his persistence in the face of specific refusal by the victim and the fact that he victimized this student knowing that she was young, vulnerable and in need of his care and support. There are instances where the Court erroneously discounts aggravating circumstances including the assessment of breach of trust and the age gap between the offender and impact on the victim.
- [74] The types of mitigating circumstances cited in this present case mirror those set out in the following excerpt from *R. v. C.K.* with the notable exception that the respondent was not assessed as solely being at "low risk" for reoffending:
- [69] I appreciate how difficult the sentencing process can be, particularly in the context of a case in which an offender pleads guilty and avoids the necessity of the victim's testimony, is genuinely remorseful, has insight into his offending, has made substantial efforts at rehabilitation and presents as a low risk, and there is evidence that incarceration may have a detrimental psychological effect, potentially undermining the progress made.
- [70] However, on a fair reading of the judge's reasons, considered as a whole, this is a case in which there was no substantive or meaningful assessment of the respondent's moral blameworthiness at the time of his offence. The judge paid considerable attention to the respondent's acceptance of responsibility and to his remorse after the fact. These are appropriately accounted for as mitigating factors at sentencing. However, they do not obviate the need to analyze moral blameworthiness at the time of the offence.

- [71] Assessing an offender's personal responsibility for a crime must consider the offender's state of mind and acts at the time of the offence
- [75] Parliament has manifested an "increasingly punitive trend to the sentencing regime for luring offences" which should be "regarded as a sign of Parliament's view of the offence's gravity. They make clear that proportionate sentencing that responds to the gravity of the luring offence and the degree of responsibility of the offender will often require substantial sentences of imprisonment": *Bertrand Marchand* at paras. 46-47.
- [76] The mitigating circumstances in *Bertrand Marchand* may be similar to the case at bar, but the aggravating features, particularly regarding breach of trust, are markedly less severe than the respondent offending against a vulnerable student. The Supreme Court of Canada increased the *Bertrand Marchand* sentence from five to 12 months' jail. The cases cited by the defence in which CSOs have been imposed are difficult to reconcile with the principles articulated in the appellate authorities including *Bertrand Marchand*, *Friesen*, *R. v. Rafiq*, 2015 ONCA 768, *Maslehati* and *R. v. G.J.M.*, 2004 BCCA 82.
- [77] For the most part, the respondent relies on Provincial Court decisions where the reasons for finding mitigating circumstances are compelling are not detailed. None of the cases involve offenders in this kind of position of trust or authority. In some, the offender believed they were communicating with a child but adults intercepted the messages sparing an actual victim. In *R. v. S.P.P.*, 2024 NSSC 42, a superior court decision from Nova Scotia where a CSO was imposed, there were unusual issues around sentencing delay that are not present in the case at bar.
- [78] The sentencing judge in the case at bar conducted a focused analysis of whether the necessarily punitive sentence could be served as a CSO, and this reasonably directed the Court to the mitigating circumstances of the case. However, the absence of an articulated analysis of those factors in the face of such significant aggravating circumstances supports the appellant's submission that it was clearly unreasonable to find the mitigating factors in this case "compelling" to the extent that a CSO was justified. A community-based sentence for a highly blameworthy offence with these numerous specific aggravating factors was demonstrably unfit.
- [79] While the mitigating circumstances must be taken into account in the proper expression of general deterrence and denunciation, the circumstances of this case requires them to be reflected by imposing a prison sentence at the lower end of the established range.

5. Sentencing Conclusions

- [80] The sentencing judge acknowledges the core aggravating factors in this case. The areas where the Court was led into error are few, but they are consequential in the sentencing analysis. Breach of trust must be considered a significant and complete aggravating circumstance. The offender's moral blameworthiness is not attenuated by any developmental or cognitive impairment. The relatively short duration of the offending must

be balanced against the fact that this is an instance of contact-driven child luring that had real impact on a young and vulnerable victim.

- [81] I rely on all of the aggravating factors identified in the reasons for sentence. Expanding on those factors in light of the foregoing errors, I find the offending occurs in a classic breach of trust scenario. The victim's vulnerability, which is noted by the sentencing judge, aggravates the particular circumstances of this case further. The respondent chose a victim knowing that she was young and vulnerable. He had worked with vulnerable youth for years and would have recognized he was in a position of trust, responsibility, and power. He persisted in reprehensible efforts to orchestrate a contact-sexual-offence despite the victim rebuffing his advances and reminding him of her age. He sent messages that manipulated the victim in a variety of ways, including co-opting her into his illegal conduct and making the vulnerable child feel responsible for other potential victims.
- [82] He harmed S.B. by interfering with her schooling when this is already something that posed a challenge. He also made her anxious and afraid. But for her courage, the result could have been much worse. S.B.'s resistance does not detract from the respondent's high moral blameworthiness or the seriousness of the offending. His repeated messages show that he acted intentionally, not impulsively or in the heat of the moment. He was concerned about what could happen to himself, but showed no inclination to stop this harmful behaviour. He acted deceitfully and for his own sexual gratification. The limited period of time over which these messages were sent is offset by the nearly immediate and significant impact the offending had on the victim.
- [83] In consideration of all factors, I find that the offender's degree of moral blameworthiness was very high. Engaging the mitigating circumstances, I cannot find that they individually or collectively detract from this high degree of responsibility at the time of offending. While specific deterrence may be met by a CSO in this case, the primary purpose of sentencing here is to send a message to any like-minded members of the public who would engage in such predatory and harmful sexual conduct towards children and adolescents online, and that their actions will result in severe consequences.
- [84] This is not tantamount to saying that a CSO could never meet the objectives of sentencing in a child luring case. This is clearly not the law. In rare cases, the seriousness of the offending must be more closely balanced with the strength of the mitigating circumstance and the diminished moral blameworthiness of the offender. This is not one of those cases.
- [85] An analysis of whether the mitigating circumstances are compelling requires more than matching the relevant mitigating factors set out in *Bertrand Marchand* at para. 72. The weight and significance of those factors in the context of a particular sentencing are important. In contrast to the aggravating circumstances around how the offence was committed and the impact that ensued, the mitigating circumstances here centre on the respondent's positive prospects for rehabilitation, specifically his remorse, his lack of criminal record, his general stability, family support and his demonstrated ability to

participate in and benefit from treatment.

- [86] On my reading of the reports, this case lacks the hallmarks of the hypothetical examples given in Bertrand Marchand, where the offence was motivated by an illness or condition from which the offender objectively demonstrated he has successfully resiled and confidently overcome. The life experiences that defence counsel submitted should detract from the respondent's culpability are well into his past and he has thankfully enjoyed the dedicated support of other family members through these hardships.
- [87] Mr. Hothi has put tremendous work into his rehabilitation since being arrested and he has done so under extremely difficult circumstances. I commend him for that commitment. It has and it will continue to serve his best interests. Rehabilitative objectives should not be abandoned in crafting a fit sentence, but they cannot take precedence over general deterrence and denunciation.
- [88] The respondent has made real progress in therapy with reputable professionals who espoused his concerted efforts to replace his poor coping strategies with healthier ones. He was found to have gained a better understanding of the importance of developing emotional intimacy in a committed relationship. He ultimately displayed good insight into his behaviour and could easily identify long-standing risk factors that impact unhealthy sexual behaviours. The extent to which these behaviours stem from his own decisions or values as opposed to the abuse he experienced as a young child, is not detailed in the reports. I accept there is some connection between his difficult upbringing and his offending. However, given the intentional way he offended and the opportunities he has had to address his own issues, given the supports in his life, I cannot find his degree of responsibility to be reduced.
- [89] Furthermore, despite having completed significant treatment and having formed a comprehensive plan to continue to mitigate risk, which the psychologist says can be well managed in the community, he has not definitively been found to be low risk when it comes to future offending. More importantly, these efforts made post-offence do not temper the moral blameworthiness of the offending when the full constellation of aggravating factors are considered.
- [90] While there is contradictory evidence with respect to the respondent's remorse, given his guilty plea and deference to the sentencing judge's findings, I have considered that the respondent is remorseful and that his guilty plea has significant weight in a case such as this. I agree with the respondent that his lack of criminal record is mitigating, but I note this is not uncommon for citizens of otherwise good social standing to commit sexual offences.

- [91] I have also considered the loss of the respondent's preferred career working with youth, but this collateral consequence garners little weight. This is not a situation where the offender is crippled by the loss of a long-standing career. He has not even begun his formal employment as an educator. I do not doubt that a criminal record for a child sex offence is going to significantly narrow the scope of his future employment, but this is a just result, given the nature of his offending.
- [92] In conclusion, the mitigating circumstances are such that a sentence in the lowest end of the range is appropriate so that Mr. Hothi can continue with his treatment and on the positive path he has now chosen. But in the face of such substantial aggravating factors, particularly the breach of trust and the offender's high moral blameworthiness, the mitigating circumstances cannot be considered compelling justification for a CSO. A jail sentence is required in the circumstances of this case in order to be consistent with the principles and purposes of sentencing and to give substantive meaning to the Court's recognition that this is harmful and wrongful offending.
- [93] I otherwise agree with the sentencing judge's assessment of the appropriate range in the reasons for sentence, and I would have imposed a 12-month sentence of incarceration. The respondent is entitled to one-for-one credit against that sentence for the time already served on his CSO with strict conditions, and the extensive work he has done to further his rehabilitation. I am crediting him with seven-and-a-half months of time served. The CSO is revoked and the respondent will serve four-and-a-half months' incarceration. The probation and ancillary orders remain in effect.

"Ormiston J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/08/2025BCSC0869.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hothi-2025>

Prepared on 28 October 2026 · Esheria