

CANADA / JUDGMENT

R. v. J.A.C.

2025 BCSC 2666

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2666 R. v. J.A.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.A.C.,

2025 BCSC 2666

Date: 20251217

Docket: 77783-2

Registry: Prince George

Rex

v.

J.A.C.

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 a witness or the complainant, who is referred to in this judgment by the initials L.B. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Justice Stephens

Oral Reasons for Sentence

Counsel for the Crown:

R.D. Withall

Counsel for the Accused:

J. Macdonnell

Place and Date of Trial/Hearing:

Prince George, B.C.

December 15-17, 2025

Place and Date of Judgment:

Prince George, B.C.

December 17, 2025

Introduction

- [1] THE COURT: A jury found J.A.C. guilty of one count of sexual assault and one count of sexual interference of L.B. Those counts related to an incident that occurred in Prince George between August 9 to 11, 2020.
- [2] In these Reasons, I refer to the complainant using her initials, L.B. Since there is a publication ban in this proceeding, in the event my Reasons are transcribed , I will use initials in these Reasons.
- [3] Crown and defence agree that a conditional stay of proceedings should be entered on Count 1, sexual assault contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46 pursuant to R. v. Kienapple, [1975] 1 S.C.R. 729, 1974 CanLII 14.
- [4] I do so: I enter a conditional stay on Count 1, sexual assault, contrary to s. 271 of the Criminal Code.
- [5] This is therefore my sentencing decision of J.A.C.'s conviction on Count 2, sexual interference contrary to s. 151 of the Criminal Code.

Circumstances of the Offence

- [6] I previously, after hearing submissions, found facts for the purpose of sentencing in accordance with s. 724 of the Criminal Code.
- [7] The facts for sentencing are as follows.
- [8] The complainant, L.B., was 14 at the time of the offence.
- [9] J.A.C. was 42 years old at the time.
- [10] The offence occurred on August 11, 2020, in J.A.C.'s residence when L.B. was staying over at a sleepover with her friend, G., who is J.A.C.'s daughter.
- [11] J.A.C.:
 - a) forced L.B. to touch his penis,
 - b) massaged L.B.'s vagina with his hand, and

c) had sexual intercourse with L.B. in the small bedroom, when L.B. was 14 years old and J.A.C. was 42 years old, and with the sexual intercourse occurring subsequently in the bedroom in the chronology of events.

Victim Impact

- [12] There is no victim impact statement pursuant to s. 722 of the Criminal Code.
- [13] Crown invited the Court to make findings from the complainant L.B.'s testimony at trial to constitute evidence about victim impact.
- [14] However, s. 722(1) requires the court to consider a statement of the victim prepared in accordance with that section:

Victim impact statement

722 (1) When determining the sentence to be imposed on an offender or determining whether the offender should be discharged under section 730 in respect of any offence, the court shall consider any statement of a victim prepared in accordance with this section and filed with the court describing the physical or emotional harm, property damage or economic loss suffered by the victim as the result of the commission of the offence and the impact of the offence on the victim.

- [15] Here there is no victim impact statement prepared in accordance with s. 722 and filed, and I decline to assess the complainant L.B.'s evidence before the jury at trial and attempt to now make findings of fact as a proxy for the absence of a filed s. 722 victim impact statement for the purposes of sentencing. I do not consider doing so would be a matter of "presenting [a victim impact statement under s. 722] in any other manner that the court considers appropriate" on the request of a victim under s. 722(5).
- [16] However, I do take into account generally, under *R. v. Friesen*, 2020 SCC 9 and related authority, the significant harm to children from sexual offences.

Circumstances of the Offender

- [17] Sections 718 to 718.2 of the Criminal Code indicate that sentencing is a highly individualized exercise and, in addition to considering the circumstances of the offence, I must also take into account the circumstances of the offender. In this respect, I have had the benefit of receiving and reviewing three reports in relation to J.A.C.:
- a) a Pre-Sentence Report from a probation officer dated December 9, 2025 (the "Probation Officer PSR");
 - b) a Pre-Sentence Report and Psychological Assessment written by a Registered Psychologist dated December 1, 2025, (the "Psychological PSR"); and

- c) a Gladue Letter for Sentencing for J.A.C. dated December 5, 2025, prepared for the purposes of s. 718.2(e) of the Criminal Code (the "Gladue Letter").

[18] J.A.C. is currently 47 years old and was born in Prince George.

[19] J.A.C. has a criminal record and Exhibit 4 is a conviction list that sets out the convictions from 2001 onward. They include nine convictions although, as Crown acknowledges, there is no prior related or relevant history. That is, the criminal record does not indicate any previous convictions under s. 151 or s. 271 of the Criminal Code.

Psychological PSR

[20] I have reviewed the Psychological PSR and I quote the following excerpts where the report states:

[J.A.C.] has denied responsibility for the offences of which he was convicted. This introduces certain limitations to this assessment, particularly regarding the evaluation of potential motivations and antecedents related to the offence.

He explained in the weeks leading up to the offence, he was dealing with the end of a long-term relationship and had relapsed into drug use to cope with the loss.

[21] The Psychological PSR outlines J.A.C.'s background:

[J.A.C.] reported he was born in Prince George. He explained his biological mother had substance use issues, so she was not part of his life growing up. When he was a child, he stated his father was normally away for work, as part of the logging industry, so he was raised by his grandparents until age nine. At this point, his father remarried and he lived with his father and stepmother.

[22] According to the Psychological PSR, J.A.C. explained that he grew up around certain Indigenous traditions, such as carving, and felt this was part of his identity. Other excerpts of the Psychological PSR include:

- "[J.A.C.] identified a lengthy history of problematic alcohol and methamphetamine use";
- "[J.A.C.] reported a lengthy history of methamphetamine and alcohol use";
- "[J.A.C.] meets [the] DSM-5-TR criteria for stimulant use disorder (methamphetamine) currently in sustained remission and alcohol use disorder currently in sustained remission";
- "He reported the last several years were the most difficult for him, where he ended up homeless due to his drug use";
- "He stated he was currently 2.5 years sober from drugs, had not used alcohol in eight years and had rebuilt many of his family relationships";
- "He tended to attribute some blame to the victim but also asserted he needed to take responsibility for putting himself into the situation where an allegation was made";

- "The offence was likely opportunistic and impulsive";
- "It is possible, the sexual offence was also precipitated by poor emotional control";
- "[The] recidivism estimates placed him in the below average risk category (Level II) for sexual recidivism compared with other males convicted of a sexual offence"; and
- "Based on the current assessment, [J.A.C.] was assessed as presenting a below average risk [risk level II] for a future sexual offence, compared to other men convicted of sexual offences."

[23] On page 13 of the Psychological PSR it states:

Based upon the limited available information, future offending would most likely be against a pubescent, minor female. The victim would likely be in close and available proximity to him. Future offending would be opportunistic, likely motivated by sexual gratification within the context of substance and problems with emotional control, with a tendency towards impulsive behaviour. However, given [J.A.C.'s] ongoing denial of the offences, it is difficult to ascertain triggers for increasing risk, or other warning signs for those monitoring him.

[24] The Psychological PSR makes recommendations at pages 13 and 14, including that J.A.C. "should not have unsupervised access with minor females. As a full understanding of his motivations for the offence is unknown, the risk he presents to other minor females is difficult to precisely ascertain".

Probation Officer PSR

[25] I have also reviewed the Probation Officer PSR.

[26] Among other things, it reports:

[J.A.C.] stated he was introduced to alcohol at approximately the age of ten. He stated he was exposed to substance misuse early and often given his mother's struggles. By the age of fifteen he was "rebellious" against his father by misusing substances. [J.A.C.] recounted experimenting with solvents, prescription medications, opioids, and marijuana, and addictions to methamphetamines and cocaine. [J.A.C.'s] substance use significantly increases in times of emotional distress such as the end of his romantic relationships and the time he was charged with the current offence.

[27] It further states: "[J.A.C.] continues to maintain he is innocent of the offences for which he has been convicted, which limits the ability to fully assess his understanding of the offences and the impacts of them on himself, the victim, and the larger community."

[28] The Probation Officer PSR also provides a summary and proposed interventions.

Gladue Letter

[29] I also reviewed the Gladue Letter.

[30] It states that J.A.C. "describes his early years as marked by instability and chaos."

[31] It also states that some initial "stability" in his early childhood "ended abruptly when he was required to move in with his father and his father's new partner who identifies as Métis."

[32] The report states:

Between the ages of 9 and 15, [J.A.C.] recalls that both his father and [stepmother] struggled with alcohol misuse, and that incidents of violence frequently occurred within the home.

[33] It reports that "[s]ince the age of 15, [J.A.C.] has experienced alternating periods of sobriety and substance use."

[34] It states:

Research further indicates that individuals whose parents or grandparents attended Indian Residential Schools often experience intergenerational impacts, including the disruption of healthy parenting practices and the breakdown of family structures across generations. (Cowan, 2020, p. 28)

[35] It also reports:

[J.A.C.] explained that his connection to Métis traditions and culture was shaped largely by the teaching of his stepmother. He expressed appreciation for being raised within Métis cultural practices

[36] The Gladue Letter provides information regarding a healing plan and restorative justice considerations.

[37] The Gladue Letter also states: "[J.A.C.] expresses interest in applying for Métis status. If he desires to do so, he is encouraged to reach out to the MNBC where he can explore his eligibility for Métis citizenship."

J.A.C.'s Right of Allocution

[38] J.A.C. spoke at the sentencing hearing.

[39] He said he would like the Court to understand, and it is important to note:

- that he finds it hard to try to find words to say where his heart lies with this;
- that he struggles with the words and how to describe how he feels;
- that he has worked hard to rebuild himself and the mistakes and poor choices he made, and addictions that he has had;
- that he feels 100% remorse for all parties involved;
- that he fully understands how it has impacted each of the other parties involved;
- that he feels full empathy and he is heartfelt, but it is hard to put it into words;

· that he feels regret for his choices and how this has affected the complainant, her family, and his family; and

· that he says that he bears responsibility for carrying the conviction for these actions he has been convicted of.

[40] He stated that he has spent a few years working on his sobriety.

[41] He stated he carries shame and regret, and he apologizes for his actions.

[42] He asks for leniency.

[43] He states he is Christian and he has spent a few years working with his pastor and putting his whole heart into that, and he says he is trying to be a productive person in society and a better father to his children and to his grandson.

Position of the Crown

[44] The Crown is seeking a global sentence of six years' custody less remand time at the rate of 1:1.5 pursuant to s. 719 of the Criminal Code.

[45] The calculated credit is agreed to be 53 days when applying that ratio.

Position of the Defence

[46] In oral submissions, the defence sought a three to five year non-custodial sentence.

[47] Or, alternatively, the defence sought 12 months' jail on Count 2 and two or three years probation.

[48] The defence submits a global sentence of 12 months' jail would be a fit and appropriate sentence.

[49] The defence submits that J.A.C. is remorseful, despite what is relayed in the pre-sentence reports. Defence submits that J.A.C. has a grade eight education and may not be in a good position to articulate his feelings in regard to the offences.

[50] The defence submits that the court has a subjective, discretionary task.

[51] The defence submits that the offence was a one-off situation, a singular, one-event offence which occurred over a short duration of 15 minutes, and that it did not occur at J.A.C.'s home over a series of days and this is not a circumstance of a frequent event as in other caselaw involving sexual interference.

[52] The defence argues that this is a one-off event and that this aspect is of significance and should reduce the sentence imposed for this offence.

[53] The defence submits that J.A.C. has a low risk of recidivism or of becoming a repeat offender, and the risk is likely non-existent, noting he has no prior convictions for sexual offences.

- [54] However, I choose to put little weight on the risk assessment aspect of the Psychological PSR, and here I follow *R. v. D.J.H.*, 2022 BCSC 1743, where Justice Riley, then of this court, observed in that case:
- [24] Mr. H continues to deny his guilt and his failure to acknowledge responsibility cannot be treated as an aggravating factor at sentencing. It is simply the absence of a mitigating factor. In other words, because of his refusal to admit what happened, he is in no position to receive any credit for accepting responsibility.
- [28] I will say, however, that the offender's refusal to discuss the circumstances leading to his criminal offending has an obvious bearing on the degree of confidence that can be placed in the risk assessment. It is based on incomplete information, and for this reason does not carry as much weight or attract as much confidence as would an assessment made with the benefit of the offender's input about what led to the sexual misconduct underlying the conviction.
- [55] The defence submits that J.A.C. has taken positive steps since the offence, including maintaining sobriety, going to church, and mending relationships with family members, and the risk of his offending is zero.
- [56] In general, I find that certain of the defence's positions invite the court to place primacy on the circumstances of the offender which, in my view, is contrary to the holding in *Friesen*, among other cases, and s. 718.01 of the Criminal Code, which requires, in circumstances involving abuse of a person under the age of 18 years, as here, that the court instead place primary consideration on the objectives of denunciation and deterrence.
- [57] Further, I reject defence's submission that mid-single-digit and longer sentences are cases with offences involving a longer duration, or frequency, of sexual interference, including the worst of the worst, since that proposition is contrary to the express holding in *Friesen* that:
- [114] 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. We would add that substantial sentences can be imposed where there was only a single instance of sexual violence and/or a single victim, as in this case . In addition, as this Court recognized in *L.M.*, maximum sentences should not be reserved for the "abstract case of the worst crime committed in the worst circumstances"

Legal Framework

Principles of Sentencing

- [58] The duty of a sentencing judge is to determine a just and appropriate sentence that addresses the principles of sentencing, as set out in s. 718 of the Criminal Code, and that is proportionate to the gravity of the offence committed and the moral blameworthiness of the offender: see *R. v. Sheppard*, 2025 SCC 29 at para. 68.
- [59] Sentencing is a balancing process. No one objective trumps the others. It is a sentencing judge's role to determine which objectives merit the greatest weight, given the circumstances of the offence and the offender.
- [60] I must bear in mind the purposes and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code. As stated in s. 718, the fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. Just sanctions are those that are intended:
1. To denounce unlawful conduct and the harm done to victims or the community caused by unlawful conduct;
 2. To deter the offender and other persons from committing offences and, where necessary, to separate offenders from society;
 3. To assist in rehabilitating offenders;
 4. To provide reparations for harm done to victims or the community; and
 5. To promote a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.

See *Sheppard* at para. 71.

- [61] Section 718.1 of the Criminal Code states that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." Ultimately, the resulting sentence must respect the principle of proportionality.
- [62] Ensuring that a sentence reflects the gravity of the offence is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system: *R v. Ipeelee*, 2012 SCC 13 at para. 37.
- [63] Ensuring that a sentence reflects the degree of responsibility of the offender ensures it does not exceed what is appropriate, given their "moral blameworthiness." It serves a restraining function and ensures justice for the offender: *Ipeelee* at para. 37.

- [64] Proportionality is determined both on an individual basis in relation to the accused and the offence they committed, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a proportionate sentence: *R. v. Lacasse*, 2015 SCC 64 at para. 53.
- [65] Further, under s. 718.2 of the Criminal Code, a sentence should account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
- [66] A sentence should also be similar to the sentences given to similar offenders for similar offences committed in similar circumstances; this is described as the principle of parity: *Sheppard* at para. 69.
- [67] Section 718.2(d) requires that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances.
- [68] Sentencing requires close attention to the particular circumstances of the case and the characteristics of the offender. Section 718.2(e) requires that "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."
- [69] I am particularly cognizant of s. 718.2(e). I have considered the Criminal Code and principles in *R. v. Gladue*, [1999] 1 S.C.R. 688, 1999 CanLII 679 and *Ipeelee*. I have considered the principles from *Gladue* stated by the Court in *Ipeelee* at para. 59.
- [70] Within the scope of s. 718.2(e), the court must still consider the matter on a case-by-case basis considering the offence, the offender, the victim, and the community: *R. v. Wells*, 2000 SCC 10 at paras. 40, 44; see also *R. v. Kehoe*, 2023 BCCA 2 at para. 43. *Kehoe* states in part: "no offence is so serious that it negates the need for a sentencing judge to consider s. 718.2(e) of the Code": at para. 44.

Offence-Specific Provisions

- [71] Section 151(a) states that a person convicted is liable to imprisonment for a term of not more than 14 years and a minimum punishment of imprisonment of a term of one year.
- [72] The mandatory minimum sentence was struck down in *R. v. Scofield*, 2019 BCCA 3 at para. 89.
- [73] I have also considered s. 718.01 which applies here:

Objectives -- offences against children

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

Case Authority

- [74] I have considered the principles of sentencing relating to sexual offences against children set out in the leading case of Friesen.
- [75] In *R. v. C.K.*, 2023 BCCA 468, the court at para. 54 and onward referred to Friesen and other case authority. It then went on to state:
- [59] As aptly noted by the Ontario Court of Appeal in *R. v. T.J.*, 2021 ONCA 392 [T.J.]:
- [39] Friesen does not simply contain a list of principles and factors to be mentioned in a sentencing decision; it insists that those factors be reflected in a sentence that is of sufficient length to recognize them.

[Emphasis added [in C.K.]]

- [60] Specific to moral blameworthiness, the Supreme Court of Canada said this in Friesen:
- [87] Courts must also take the modern recognition of the wrongfulness and harmfulness of sexual violence against children into account when determining the offender's degree of responsibility.
- [88] Intentionally applying force of a sexual nature to a child is highly morally blameworthy because the offender is or ought to be aware that this action can profoundly harm the child. In assessing the degree of responsibility of the offender, courts must take into account the harm the offender intended or was reckless or wilfully blind to
- [89] All forms of sexual violence, including sexual violence against adults, are morally blameworthy precisely because they involve the wrongful exploitation of the victim by the offender -- the offender is treating the victim as an object and disregarding the victim's human dignity. Courts must give proper weight in sentencing to the offender's underlying attitudes because they are highly relevant to assessing the offender's moral blameworthiness and to the sentencing objective of denunciation
- [90] The fact that the victim is a child increases the offender's degree of responsibility. Put simply, the intentional sexual exploitation and objectification of children is highly morally blameworthy because children are so vulnerable. Offenders recognize children's particular vulnerability and intentionally exploit it to achieve their selfish desires
- [91] These comments should not be taken as a direction to disregard relevant factors that may reduce the offender's moral culpability. The proportionality principle requires that the punishment imposed be "just and appropriate . . . and nothing more" First, as sexual assault and sexual interference are broadly-defined offences that embrace a wide spectrum of conduct, the offender's conduct will be less morally blameworthy in some cases than in others. Second, the personal circumstances of offenders can have a mitigating effect. For instance, offenders who suffer from mental disabilities that impose serious cognitive limitations will likely have reduced moral culpability

[92] Likewise, where the person before the court is Indigenous, courts must apply the principles from *R. v. Gladue*. The sentencing judge must apply these principles even in extremely grave cases of sexual violence against children

[Emphasis added [in C.K.]]

[61] A sentencing analysis that does not give proper effect to moral blameworthiness is likely to result in a skewed proportionality analysis, one that " risks the offender's personal circumstances overwhelming the determination of a fit sentence": P.R.J. at para. 53

[76] In *Sheppard*, the Court further states:

[72] In *Friesen*, this Court recognized that the sentences being imposed for sexual offences against children were disproportionately lenient because they were rooted in historical misconceptions about the gravity of these offences (paras. 50 and 110). This Court directed courts to "take the modern recognition of the wrongfulness and harmfulness of sexual violence against children into account when determining the offender's degree of responsibility" (para. 87). In practice, this meant that "sentences for sexual offences against children must increase" (para. 151) and that "[c]ourts are thus justified in departing from precedents" (para. 110).

[77] In *Friesen*, the Supreme Court of Canada also said:

[114] it is incumbent on us to provide an overall message that is clear . That message is 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. We would add that substantial sentences can be imposed where there was only a single instance of sexual violence and/or a single victim, as in this case, *Woodward and L.M.*

[78] In *Friesen* at para. 175, the Court stated that the six-year sentence in that case should not be considered as being reserved for the notional "worst offender".

[79] In *R. v. Maslehati*, 2024 BCCA 207 at para. 67, the Court of Appeal said:

[67] *Friesen* sent a strong message to judges tasked with sentencing for child sexual assault: mid-single digit penitentiary terms should be considered normal and upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances: at para. 114. Appellate decisions released post-*Friesen* show that substantial penitentiary terms are no longer unusual for child sexual assault, even for first-time offenders

Crown Case Law

[80] Certain cases referred to by the Crown in their book of authorities had different facts and circumstances.

- [81] However, I note, for example, in D.J.H. a sentence of six years for sexual interference was imposed where the offence was for sexual touching on multiple occasions, but the offender also threatened to kill the victim if she told anyone, and the court considered the degree of violence or force used in the crimes to be an aggravating factor. The court there found the risk to reoffend existed, but that risk was on the low end.
- [82] In *R. v. Adams*, 2022 BCSC 1519, a 10-year jail sentence was imposed as a global sentence, but there the offending occurred repeatedly, often in the family home: at paras. 68, 87.
- [83] In *Sheppard*, the Supreme Court of Canada upheld a sentence of six years' incarceration for sexual offences which, on the facts of that case, involved approximately 10 incidents of sexual violence against the complainant: at paras. 13, 32.
- [84] In *R. v. J.N.P.*, 2020 BCSC 570, a post-Friesen decision of Justice Iyer, then of this court, the court imposed a sentence of a term of incarceration of three years for a s. 151 offence. There the acts of sexual touching included forced fellatio and the most significant mitigating factor in that case was J.N.P.'s status as an Indigenous person: at paras. 28, 30. The court there found a sentence of six to seven years was clearly excessive: at para. 34.
- [85] In my reading of that case, the three-year sentence imposed in *J.N.P.* for sexual interference with a minor involving forced sexual activity took into account strong Gladue factors in that case.

Defence Cases

- [86] I do not find the majority of the cases referred to by the defence in oral submissions to be of assistance.
- [87] There are several cases which predated Friesen and should be treated cautiously. Again in Friesen, the Supreme Court of Canada said with implied reference to previous sentencing caselaw at that time that:
- [5] we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase.
- [88] The defence's pre-Friesen cases included: *R. v. Ford*, 2019 ABCA 87; *R. v. Muller*, 2019 ABPC 58, which involved a guilty plea; *R. v. Scofield*, 2019 BCCA 3, also involved a guilty plea; *R. v. C.F.Y.*, 2019 NSSC 178; *R. v. Pye*, 2019 YKTC 21, also involving a guilty plea; *R. v. Hussein*, 2017 ONSC 4202; *R. v. Burton*, 2017 NSSC 181; and *R. v. Casimir*, 2016 BCSC 65, where 12 months' jail followed by two years' probation was ordered, but I note in that case the court found there were exceptional and unique circumstances and Gladue factors (at paras. 47-48). And I find, however, there are no such exceptional and unique factors present in the case at bar relating to J.A.C. as there were in *Casimir*.
- [89] Nor do I find that certain of the defence's cases post-Friesen to be helpful in the case at bar.

- [90] The defence relied on *R. v. Alfred*, 2021 BCCA 71, which was a pre-Friesen trial decision which was upheld by the Court of Appeal on appeal of the trial judge's decision, in which the trial judge applied strong Gladue factors.
- [91] Defence also referred to *R. v. Wood*, 2021 NSSC 253, which involved a guilty plea (see para. 1) and imposed three years and six months for sexual interference and a total sentence of four years and seven months' prison, which included an offence of making child pornography and a firearms offence.
- [92] I note in *Wood* and other cases I was referred to, a guilty plea was entered, whereas that does not apply here as a mitigating factor, which is a distinguishing factor: see *R. v. Bonnell*, 2024 BCSC 1455 at para. 69.
- [93] However, the case of *R. v. Audet*, 2020 ONSC 5039, referred to by defence, is more relevant to the case at bar since in *Audet* there occurred full intercourse for what might be described as a single-event, single-victim s. 151 offence. The court found a sentence of four years was fit and appropriate (see para. 35); and the court followed that aspect of *Friesen* which held that a mid- to upper-single-digit sentence is appropriate, even for a first-time offender convicted of a single incident of this nature.
- [94] At para. 34 of *Audet*, which again involved what might be referred to as a single incident involving sexual intercourse, the court comments that mid-single-digit in this context means five years for non-consensual sexual intercourse with a teenage child:
- [34] The case law supplied to me, by both Crown and Defence, establishes quite clearly that the only fit and appropriate sentence for a case involving non-consensual sexual intercourse with a 15-year-old child is a penitentiary sentence. The appellate courts are taking a very hard stand on this issue as seen in the decision of the Supreme Court of Canada in the *Friesen* case and in the comments of the Ontario Court of Appeal in the *S.A.* case noted above. The question then becomes the number of years that an offender, in a particular case, should spend in the penitentiary. The court in *Friesen* suggested a mid to upper single digit sentence is appropriate, even for a first offender convicted of a single incident of this nature. In my view, the words "mid-single digits" mean just that, the midpoint between one and nine, being five years.
- [Emphasis added.]
- [95] Speaking broadly, and acknowledging each case has its own specific facts, my reading of certain of the post-Friesen cases and caselaw is that six or more years or higher of jail has been imposed in sexual offence cases involving children where there are multiple events over a period of time, more than one day (see e.g., *Sheppard*, D.J.H., *Bonnell*, *Adams*), or there is sexual interference coupled with a threat of violence or extortion (see e.g., *D.J.H.* and *Friesen*).

[96] Again, speaking broadly, this tends to lead to the conclusion that an offence of sexual interference involving three events close in time, during one day, as in the case at bar, would tend to be towards a lower number of years than six years: see e.g., Audet, where four years' prison was imposed.

Assessment

Aggravating Factors

[97] On the s. 724 hearing, I found the following facts:

- 1) the offences took place while L.B. was staying over as a guest in J.A.C.'s residence at a sleepover with J.A.C.'s daughter; and
- 2) L.B. was 14 years old at the time.

[98] There are several aggravating factors in this case:

- a) The complainant, L.B., was less than 18 years old: see Sheppard at para. 13; Criminal Code, s. 718.2(a)(ii.2) (making this a statutory aggravating factor).
- b) J.A.C. abused a position of trust: see Criminal Code s. 718.2(a)(iii); Sheppard at para. 13. I find J.A.C. abused a position of trust, being the parent of a child having a sleepover with L.B. I reject defence's submission that this was not a situation where there was a breach of trust by J.A.C.
- c) The degree of physical interference was significant. While there is no hierarchy of physical acts in terms of severity of interference, and physical acts such as digital penetration and fellatio can be just as serious a violation of the victim's bodily integrity as penile penetration, sexual intercourse is serious and an aggravating factor. I do find the sexual intercourse to be a significant violation of the complainant L.B.'s sexual integrity: Sheppard at paras. 102-104. In short, this is a serious offence. J.A.C., 42 at the time, had sexual intercourse with a 14-year-old girl. That the sex act involved sexual intercourse is aggravating.
- d) There was more than one type of sexual interference which occurred. Three acts of sexual touching occurred. The defence argues this is not a situation of duration and frequency, and instead was a single, short event of about 15 minutes. But I do find that the three acts of touching are multiple events of sexual violation and constitute an aggravating factor. Although I add, for the purposes of comparison with other sentencing cases, I place the case at bar before me closer to a single-event, single-victim offence than to an offence occurring with duration and frequency or with multiple victims.

Mitigating Factors

[99] Turning to the mitigating factors.

[100] The pre-sentence reports indicate that J.A.C. does not acknowledge he committed the offences, which limits the assessment of his insight into the offences and its impact on the victim and community. However, at the sentencing hearing J.A.C. did express remorse for his actions.

[101] The defence argues the following are mitigating factors:

- J.A.C.'s remorse;
- Gladue factors, which I will deal with separately;
- tragic family circumstances and upbringing;
- efforts at rehabilitation from illicit drug addiction;
- that J.A.C. is gainfully employed;
- good employment record; and
- no prior convictions under ss. 151 or 271 or any convictions for sexual assault.

Remorse

[102] While not expressed in the pre-sentence reports, J.A.C. at this hearing during his right of allocution did express remorse for his actions and I do take this into account as a mitigating factor.

Recidivism

[103] The Psychological PSR indicates a low level to reoffend, but I do not place much weight on the Psychological PSR opinion that J.A.C. has a low risk of committing another sexual offence, for the reasons I have stated.

Efforts to Rehabilitate

[104] The pre-sentence reports relay that J.A.C. has taken steps to be sober, and I find this is some mitigating factor. However, while his efforts are laudable, they do not serve as a significant mitigating factor here.

[105] I also do consider that J.A.C. has no prior convictions under ss. 151 or 271.

Gladue Principles/Sentencing Considerations for Indigenous Offenders

[106] Sentencing judges have a statutory duty to consider the unique circumstances of Aboriginal offenders in sentencing. Failure to do so is a reversible error: Criminal Code, s. 718.2(e); Gladue at para. 82; Ipeelee at para. 87.

[107] Consideration of Gladue factors when the offender is Aboriginal is essential to ensure a sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender: Ipeelee at para. 73.

[108] The Gladue Letter before me states:

While living with his father and stepmother, [J.A.C.] was also exposed to daily alcohol consumption and frequent violent outbursts within the household. He states that, upon reflection, he believes he began developing issues with alcohol and substance use as early as age 15. He acknowledges that the environments he was raised in normalized this behaviour and influenced his own relationship with substances.

[J.A.C.] reports that between the ages of 9 and 15, his home environment was marked by frequent traumatic experiences involving alcohol-fuelled violence between his parents.

[J.A.C.] describes his relationship with his stepmother as tumultuous throughout his childhood and teenage years.

[J.A.C.'s] stepmother reports that her maternal Métis grandparents were forced to attend Indian Residential Schools. Her grandmother attended [an] Indian Residential School, and her grandfather had attended one in the Northwest Territories.

[J.A.C.] describes his upbringing with [his stepmother] as extremely harsh, noting that punishments were severe. [J.A.C.] believes that growing up in a home marked by harsh parenting and exposure to intergenerational substance use contributed to an unstable and challenging environment, shaping his early experiences and coping strategies.

[109] I have considered the principles and holdings in *R. v. Olson*, 2023 BCCA 430, and the Kehoe case. Olson states:

[46] [the accused was] a deeply troubled, unstable and dysfunctional youth, who exhibited many forms of behaviour common in some of the Indigenous youth whose lives have been blighted by intergenerational trauma arising out of Canada's colonial history. But, as Marchand J.A. explained in Kehoe at paras. 46-49, and as is reflected in Hamer at paras. 114-17, there needs to be a connection between that history and the circumstances of an Indigenous offender to ground an analysis to assess the offender's moral culpability.

[110] Crown submits that the Gladue factors are not significant for J.A.C. and do not necessarily call for a sentence of less than six years.

[111] However, as a young boy J.A.C. lived with his family, including his Métis stepmother. The Gladue Letter does not disavow J.A.C.'s heritage as Métis because J.A.C. was not the biological child of his Métis stepmother, nor because he lived there with her for only part, but not all, of his childhood. On the basis of the Gladue Letter, I find a Gladue analysis is required.

- [112] The Gladue Letter is also evidence on which it could be concluded that J.A.C. experienced some intergenerational trauma while living with his stepmother, and that J.A.C. has experienced substance abuse since his teenage years.
- [113] I find that Gladue factors are operative with J.A.C. and must be considered in his sentence.
- [114] I find J.A.C. has Indigenous heritage for the purposes of a Gladue assessment and has been the recipient of some intergenerational trauma relevant to Gladue considerations, experienced during his life as a child, which is plausibly associated with substance abuse that he has experienced during his life.
- [115] I add, however, that while I find Gladue considerations to be operative, I do not find the Gladue factors here are present as strongly for J.A.C. as they were in J.N.P., where the offender received a three-year sentence for the sexual offence there.

L.B.'s Heritage

- [116] Crown relied on s. 718.04 in its written submissions, but ultimately no victim impact statement was filed to provide evidence of L.B.'s heritage, nor was there evidence led at trial about whether L.B. was Indigenous. Therefore, the circumstances for the application of s. 718.04 are not present for the purposes of sentencing.

What is the Fit and Appropriate Sentence?

Type of Sentence and Appropriate Sentence for Count 2

- [117] I find that a jail sentence should be imposed for Count 2, the s. 151 offence of sexual interference. I find that a less-restrictive sanction would not be appropriate in the circumstances.
- [118] I reject defence's submission that a non-custodial sentence would be appropriate for this offence. A non-custodial sentence would run contrary to the principles in Friesen and related BC caselaw on sentencing for sexual offences against children.
- [119] In cases involving a sexual assault with aggravated circumstances, such as penile penetration, a conditional sentence will rarely be available: R. v. Maslehati, 2024 BCCA 207 at paras. 9, 11, 105, 113-116, citing R. v. T.H., 2024 BCCA 123 at paras. 6, 60; R. v. Henry, 2024 BCCA 132 at para. 32. I find that a conditional sentence order is not a fit and appropriate sentence in this case.

Count 2 - Sexual Interference

- [120] I bear in mind the strong guidelines in Friesen about the need to denounce and deter sexual violence against children: J.N.P. at para. 34.

[121] I reject defence's argument that to impose a sentence in the mid-single-digit range would be grossly disproportionate. And I reject that a mid-single-digit sentence is reserved for the worst of the worst: see Friesen at para. 114.

[122] In my view, having regard to the relevant circumstances and considerations, including the caselaw, a sentence of four years is fit, just, and appropriate for Count 2 for sexual interference, and anything less than that would not be proportionate to the seriousness of the offence.

Credit for Presentence Custody

[123] I find that J.A.C. should receive 53 days for pre-sentence custody, receiving credit of 35 days in jail at a ratio of 1.5:1.

Sentence/Disposition

[124] J.A.C., please stand.

[125] For the reasons I have given, I sentence you to four years imprisonment, less 53 days' credit for 35 days of pre-sentence custody, for the conviction of the offence on Count 2.

[126] I calculate four years of jail to be 1,460 days (365x4).

[127] Therefore, specifically for Count 2, sexual interference contrary to s. 151 of the Criminal Code, I order a net sentence of 1,407 days jail. The total sentence would have been 1,460 days jail before giving any credit for pre-sentence custody.

[128] You may be seated, J.A.C.. There are a number of other sentencing orders that I must now address.

SOIRA Order

[129] The Crown submits that, given that the Psychological PSR has classified J.A.C. as being below average risk for sexual recidivism, the Crown cannot argue there is such increased risk as referred to in s. 490.013(3).

[130] Therefore, the Crown is seeking only a registration for a period of 20 years.

[131] I make a mandatory Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA] order for 20 years pursuant to s. 490.013(2)(b) of the Criminal Code.

Ancillary Orders

[132] J.A.C., you will also be subject to the following ancillary orders.

Firearm Prohibition

[133] Pursuant to s. 109(2)(a) of the Criminal Code, you will be prohibited from possessing any of the items listed in subsection 109(2)(a) for 10 years following your release from imprisonment, and any of the items in subsection 109(2)(b) for life.

Mandatory DNA Order

[134] Since s. 151 is a primary designated offence under s. 487.04 of the Criminal Code, I make an order under s. 487.051 of the Criminal Code for an order in Form 5.03 authorizing the taking of a number of samples of bodily substances reasonably required for the purposes of forensic DNA analysis.

No Contact Order

[135] Pursuant to s. 743.21 of the Criminal Code, for as long as J.A.C. is in custody serving his sentence, there will be no direct or indirect communication with L.B. I make that order pursuant to s. 743.21.

Section 161 Prohibition Order

[136] Pursuant to s. 161 of the Criminal Code and for a period of 10 years following release from custody, I make the following order as sought by the Crown:

For a period of ten (10) years, the defendant will be prohibited from:

- (a) attending a public park or public swimming area where persons under the age of 16 are present and can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre;
- (b) being within one (1) kilometre of any dwelling house of L.B; and
- (c) seeking, obtaining or continuing in the employment, whether or not the employment is remunerative, or becoming or being a volunteer in a capacity that involves being in position of trust or authority towards persons under the age of 16 years.

Forfeiture Order

[137] I further make an order forfeiting the articles seized from J.A.C. in respect of the offences to the Crown to be disposed of pursuant to s. 491 of the Criminal Code. The Crown will draft an order in this regard.

Victim Surcharge

[138] I order a victim surcharge pursuant to s. 737(2)(b) of the Criminal Code in the amount of \$400.

Materials for Correctional Services

[139] Counsel, I now wish to make an order for materials to Correctional Services. Crown requested that I order the following documents be sent: a copy of the Reasons for Sentence, recommendations for sentence, and the pre-sentence reports. I propose, in the circumstances, to order that both my Reasons for Sentence and the exhibits on sentence, which include the pre-sentence reports, be forwarded to Correctional Service Canada.

[140] Mr. Withall, that is what I propose to do.

[141] CNSL R.D. WITHALL: Yes, Mr. Justice, and I wonder if we should include your decision with respect to the finding of fact?

[142] THE COURT: I do not think that is necessary, because I have included the relevant portions in the reasons for sentence.

[143] CNSL R.D. WITHALL: Thank you.

[144] THE COURT: Mr. Macdonnell, any position on that?

[145] CNSL J. MACDONNELL: No.

[146] THE COURT: I will therefore also order for materials for Correctional Service Canada as follows.

[147] Under s. 743.2, I order the following documents be forwarded to Correctional Service Canada: my Reasons for Sentence and the exhibits on sentence, including the pre-sentence reports.

[148] [Discussion with counsel regarding s.726.3 of the Criminal Code]

[149] Is there anything further, counsel? Mr. Withall, is there anything further from the Crown?

[150] CNSL R.D. WITHALL: I don't believe so, Mr. Justice.

[151] THE CLERK: Mr. Justice, can I confirm that Count 1 is a Kienapple stay of proceedings?

[152] THE COURT: Kienapple, yes. Madam Registrar has just asked me to confirm that Count 1 is Kienapple'd, a conditional stay of proceedings.

[153] CNSL R.D. WITHALL: Conditional stay, yes.

[154] THE COURT: Yes.

"Stephens J."

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