NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. R.B.B.*, 2024 NSCA 17

Date: 20240213
Docket: CAC 522379
Registry: Halifax

Between:

His Majesty the King

Appellant

v.

R.B.B.

Respondent

Restriction on Publication:
Sections 486.4 and 486.5 of the *Criminal Code*

Judge:	The Honourable Justice J.E. (Ted) Scanlan
Appeal Heard:	January 22, 2024, in Halifax, Nova Scotia
Subject:	Sentence Appeal s. 172.1(1)(b) (luring a child under the age of 16 by telecommunication for a sexual purpose)
Summary:	Trial judge sentenced the respondent to a Conditional Sentence Order (CSO), 2 years less a day, plus two years probation. He had a two-week-long internet exchange with the victim, a relative, and used that as an opportunity to increase her comfort level enough to engage in sexually explicit communications and expose and touch herself in a sexual manner.
Issues:	Did the trial judge err in not imposing a carceral sentence? The appellant argued the respondent should have been sentenced to a jail sentence between fifteen months and two years less a day. The respondent says the sentence was appropriate and the appeal should be dismissed.

Result: Appeal dismissed.

Custodial sentences are the norm in offences such as this. The judge considered the circumstances of the offence and the offender. A CSO was a lawful sentence, available to the judge. She considered proper principles of sentencing and correctly applied the law, deciding that a CSO was appropriate.

This Court should not interfere with a lawful sentence unless it is demonstrable unfit or the judge made an error in principle that materially impacted the type of sentence. The sentence imposed was neither unfit, nor the result of an error in principle.

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Judges:	Wood C.J.N.S.; Fichaud and Scanlan JJ.A.
Appeal Heard:	January 22, 2024, in Halifax, Nova Scotia
Held:	Leave granted, appeal dismissed, per reasons for judgment of Scanlan J.A.; Wood C.J.N.S. and Fichaud J.A., concurring
Counsel:	Timothy O'Leary, for the appellant Jonathan Hughes, for the respondent

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Order restricting publication — victims and witnesses

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Reasons for judgment:

Background

[1] Pursuant to an information sworn July 7th, 2020 the respondent was charged with an offence contrary to s. 172.1(1)(b) of the *Criminal Code* (luring for a sexual purpose, by telecommunication, a child under the age of 16). Upon conviction in February 2023 Provincial Court Judge Anne Marie Simmons sentenced the appellant to a Conditional Sentence Order (CSO); 2 years less a day, plus two years probation. The CSO directed that for the first 12 months the respondent would be subject to house arrest. For the second twelve months of the CSO the appellant was subject to house arrest each day from 9:00 P.M. to the following morning at 6:00 A.M. There were additional provisions, including a requirement for the respondent to take counselling and treatment. The probation order included a number of conditions that would see the respondent subject to direction and supervision of his probation officer until February 2027. There was also an order for a victim fine surcharge $200.00, a DNA order, and an order directing that his name be placed on the Sex Offender Registry for twenty years.

[2] The appellant now asserts the trial judge erred in principle by allowing the sentence to be served in the community saying instead a carceral sentence of fifteen months to two years less a day should have been ordered. That position is premised on an argument that, in a case like this, an offender should only be allowed to serve a sentence in the community in the rarest of cases, where exceptional circumstances exist. The appellant argues, this was not one of those rarest of cases.

[3] The respondent says the sentencing judge committed no error, and the sentence was not manifestly unfit. A CSO was an option available to the judge and she is owed deference on appeal. The judge, he says, knew and applied the law as it relates to this offence and this offender. There was no error in principle.

[4] For the reasons below, I am satisfied the appeal should be dismissed.

Overview of the Facts

[5] The offence involved a fourteen-year-old girl. The respondent, then forty-two, was her step-uncle. He communicated with her over the internet, first discussing minor matters which were not sexual in nature. The exchanges served to reduce her inhibitions and became more sexually explicit. Eventually the

interactions included the victim exposing and touching her genitals on camera, discussion of masturbating, and on one occasion the respondent's exposed penis was visible on camera. The judge found that the respondent did not plan to meet and engage in sexual activities. I will set out the facts in greater detail below as I consider the judge's decision. Here I note the events transpired over a period of approximately two weeks and stopped at the instance of the victim.

Analysis

Standard of review

Leave to Appeal

[6] Leave to appeal is required in an appeal of sentence only (s. 675(1)(b) of the *Criminal Code*). The standard for leave is whether the appeal raises an arguable issue that is not frivolous (*R. v. Tamoikin*, 2020 NSCA 43). I accept and agree with the respondent's concession that this appeal meets that standard.

Sentencing

[7] In *R. v. Hynes*, 2022 NSCA 51 at paras. 16-20, this Court set out the standard of review on sentence appeals:

> [16] Appeal courts are required to defer to lawful sentences imposed by trial judges unless the sentence is demonstrably unfit or they made an error in principle that materially impacted the type or length of the sentence imposed (*R. v. Lacasse*, 2015 SCC 64 at para. 11; *R. v. Parranto*, 2021 SCC 46, at para. 30).
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> [17] Derrick J.A., writing recently for the Court in *R. v. Cromwell*, 2021 NSCA 36, summarized the appropriate standard of review:
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> > [53] Sentencing decisions are accorded a high degree of deference in appellate review. Appellate intervention is warranted if (1) the sentencing judge has committed an error in principle that impacted the sentence or, (2) the sentence is manifestly unfit. Errors in principle include "an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor" (*R. v. Friesen*, 2020 SCC 9, at para. 26; *R. v. Espinosa Ribadeneira*, 2019 NSCA 7, at para. 34).
>
> See also: *R. v. Laing*, 2022 NSCA 23
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> **[18] This standard of review and limited role for appellate intervention applies equally to a trial judge's determination whether to order imprisonment be served by way of a conditional sentence order (see: *R. v.***

> ***Wheatley,* 1997 NSCA 94, at para. 24; *R. v. Parker*, 1997 NSCA 93, at para. 21).**
>
> [emphasis added]

[8] *R. v. Proulx*, 2000 SCC 5 acknowledged the "… discretionary essence …" of deciding whether a CSO is appropriate.

Sentence Appeal

[9] The appellant concedes that a CSO was available as a matter of law. The appellant maintains the judge erred in principle by failing to apply the law, which the appellant says requires a carceral sentence for this type of case, except in the rarest of cases, where exceptional circumstances exist. To put a narrow point on the appellant's submission, the appellant says because the judge did not start with the premise that a CSO was not applicable except in the rarest of cases, she reached the wrong conclusion. Further, had she began in the correct starting place she would not have imposed a CSO.

[10] My review is guided by the comments in *Friesen* wherein the Supreme Court of Canada referenced Parliamentary recognition of the seriousness of sexual offences against children. The Court reinstated a sentence of six years in prison for an accused. The facts of *Friesen* are significantly more serious than in the case on appeal. The offender met the victim's mother on an online dating website. He had been invited to the mother's residence and engaged in consensual sex with the mother. He then invited the four-year-old daughter into the bedroom and subjected the child to sexual violence. The child's screams awoke a friend who removed the child.

[11] The trial judge sentenced the offender to imprisonment for a period of six years as a global sentence for the offence of sexual interference and attempted extortion of the child's mother in attempting to have the child returned after having been removed. The sexual offence was the primary matter. The Manitoba Court of Appeal reduced the sentence to four and one-half years, with a sentence of eighteen months on the extortion to be served concurrently. The Supreme Court of Canada reinstated the trial court sentence of six years for the sexual interference offence.

[12] All sentencing analyses start with the principle that sentences should be proportionate to the gravity of the offence, and the degree of responsibility of the offender. Parity aims to have offenders who commit similar offences in similar

circumstances receive similar sentences. Parity is an expression of proportionality. Earlier cases with similar facts and offences offer guidance in the form of ranges of sentences. Sentence ranges and starting points are guidelines, not hard and fast rules. Whether one starts or ends by considering the range of sentences in similar cases, at the end of the day, on appeal, a sentence will be assessed for fitness, using a healthy dose of deference.

[13] *Friesen* (para. 109) references Parliament's decision in 2015 to increase maximum sentences for sexual offences against children as a shift in the range in proportionate sentences, reflecting the gravity of these offences. In *Friesen* the Court makes it clear that appeal courts should not treat the departure from the range or guideline as an error in principle:

> [161] Judge Stewart's reasoned choice to employ a higher starting point than the Court of Appeal preferred does not justify appellate intervention. As Sopinka J. stated in *McDonnell*, "it can never be an error in principle in itself to fail to place a particular offence within a judicially created category … for the purposes of sentencing" (para. 32). Since leMaistre J.A. did not identify any other error and concluded that Judge Stewart appropriately balanced the aggravating and mitigating factors, she should not have intervened. This was a function not of some mistake personally by leMaistre J.A., but rather of the legally unsound approach to starting points that she was bound to apply.
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> [162] This case exemplifies the danger of treating starting points as binding laws. …
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> [163] … A starting point is just a guideline and Judge Stewart was entitled (indeed, he was required) to depart from it where necessary so as properly to individualize the sentence (see *Lacasse,* at para. 58). …

[14] The principles set out in *Friesen* apply equally to sentences whether there is an increase or decrease in relation to a guideline or starting point. Appeal courts cannot intervene simply because the sentence is different from the sentencing range. Sentencing ranges show up in various cases. For example, in drug cases, ranges have been around for a long time and have changed as social norms have evolved. Even when ranges are set, sentencing judges have retained their discretion, and have a duty to craft a sentence, appropriate to each offender and offence.

[15] The legislative scheme dealing with child luring and sexual offences involving children focuses courts on the emotional and psychological harm, in addition to the physical harm caused by sexual offences. Although actual harm may vary from case to case, sentencing judges must give effect to the inherent

wrongfulness of the offences, the potential harm to the children, and the actual harm in each case. Parliament's increase to the maximum sentences for sexual offences involving children is reflective of prioritization of denunciation and deterrence. Parliament gets to set priorities within the limit of their constitutional authority.

[16] In child luring cases sentencing judges should take into account the high risk of an offender to reoffend, and emphasize the objective of separating the offender from society. Abuse of trust warrants a lengthier sentence. Violence committed over time and on multiple occasions attracts significantly higher sanction. The age of the child and moral blameworthiness of the offender are factors.

[17] In *Friesen* the Supreme Court emphasised that the appeal court below erred in focusing on the starting point (range of sentences) saying of the trial judge:

> [162] … Judge Stewart applied the guidance from *Sidwell* in a contextually sensitive and appropriate manner in light of the particular circumstances of the case before him. The Court of Appeal saw his responsiveness to the circumstances as an error in principle. **Rather than focusing on whether Judge Stewart chose the right starting point, the Court of Appeal should have focused on whether the sentence was fit and, most fundamentally, whether Judge Stewart applied the principles of sentencing properly within the exercise of his discretion.**
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> [emphasis added]

[18] The appellant relies upon *Friesen* yet urges this Court to make the same mistake identified in that case. This Court's analysis is to focus on the fitness of the sentence in accordance with the principles of sentencing.

[19] The appellant here argues a range has been established by cases, not in terms of duration of the sentence, but in terms of the appropriateness of a CSO. I am satisfied that whether one is talking about the length of a sentence or the availability of a conditional sentence, at the end of the day the issue is still one of fitness considering the circumstances of the case judged in the context of the principles of sentencing. Whether a sentencing judge starts or ends their analysis by asking if a carceral sentence is required matters not, so long as, on a deferential review, the sentence withstands the scrutiny of a fitness assessment.

[20] The appellant relies upon a number of cases, mainly from other jurisdictions, which they say establish that it is only in the rarest of cases, where exceptional circumstances exist, that a sentencing judge could impose a CSO in the context of

sexual offences involving children: *R. v. Folino* (2005), 203 O.A.C. 258; *R. v. Jarvis*, 2006 CanLII 27300 (ONCA); *R. v. M.M.*, 2022 ONCA 441; *R. v. B.S.*, 2023 ONCA 6 at para. 49; and *R. v. B.M.*, 2023 ONCA 224 at para. 22. I will briefly refer to the circumstances of some of those cases and suggest those cases should be distinguished on their facts.

[21] In *Folino* the accused was in a fragile mental and physical state. He arranged to meet a thirteen-year-old girl he groomed online. They were to meet and engage in sexual activity but it turned out that it was part of an undercover sting operation. The original sentence of nine months incarceration plus three years probation was altered on appeal to eighteen months CSO plus three years probation. The court said a clear message has to be sent that this conduct will be harshly dealt with but mitigating factors must be considered when sentencing. Mr. Folino's fragile mental state was in play as were his personal circumstances. Saying it will only be in the rarest of cases that a conditional sentence would be appropriate, they held this was one such case.

[22] *R. v. B.S.* involved numerous incidents of sexual touching of the victim and the victim touching the offender, both over and under their clothing. There was attempted intercourse and attempted forced oral sex. The sentence was eighteen months incarceration. There were no special or rare circumstances and the sentencing judge said the sentence was on the lenient side. The appellant did not assert the sentence was demonstrably unfit. The Appeal Court said:

> [47] Sentencing judges are in the best position to determine just and appropriate sentences: *R. v. Lacasse*, 2015 SCC 64 at para. 4. Appellate intervention is warranted in only two situations: (1) where the trial judge commits an error in principle, fails to consider a relevant factor, or erroneously considers an aggravating factor or mitigating factor, and the error had an impact on the sentence, or (2) where the sentence is demonstrably unfit: *Lacasse*, at paras. 44, 51.
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> …
>
> [49] Denunciation and deterrence are the primary objectives when sentencing for sexual offences against children. Carceral sentences will ordinarily follow and conditional sentences will only rarely be appropriate. Their availability must be limited to exceptional circumstances that render incarceration inappropriate: *R. v. Friesen*, 2020 SCC 9, at paras. 114 – 116; *R. v. M.M.*, 2022 ONCA 441, at paras. 15 – 16.

[23] *R. v. B.M.* involved a Crown appeal of a CSO imposing two years less a day. The case involved a prolonged period of abuse; 43 months with two children. A

church friend of the father was invited into the home. He took advantage of the opportunity to have anal sex on four occasions with the twelve-year-old son. After the boy refused to continue, the offender had vaginal penetration involving the younger sister, 20-30 times. The offender experienced some mental illness which, while significant, was not found to be causally connected. The Ontario Court of Appeal set aside the CSO and substituted a seven-year-term of imprisonment. This case turned on the facts which were much more serious than the case on appeal here.

[24] In *R. v. Hood*, 2018 NSCA 18 this Court upheld a fifteen-month conditional sentence in a case where a teacher started texting her former students. I note this case pre-dated *Friesen* (2020). The texts became sexual in tone and explicit images were sent. The teacher performed fellatio on one of the students, who was then fifteen years old. She was affected by an undiagnosed mental illness - a bipolar mood disorder. At the time of the original sentencing there was a mandatory minimum sentence which the judge found was unconstitutional. He imposed a fifteen-month CSO which was upheld on appeal.

[25] Although decisions have referred to the fact that it is only in the rarest of cases with exceptional circumstances that a CSO is appropriate, that phraseology does not trump what, at the end of the day, must be a deferential assessment on appeal. I return to *Friesen* (para. 27) where, as I noted above, the Supreme Court said the starting point for appellate analysis is whether the sentence as imposed was demonstrably unfit or if a sentencing judge made an error in principle that had an impact on the sentence.

The trial judge's reasons

[26] At the risk of repeating, I examine the trial judge's reasons in greater detail. Judge Simmons conducted a thoughtful and thorough review of the evidence. The communications began when the victim was experiencing emotional turmoil and mental health issues. At first the respondent was a source of comfort to her. The internet communications expanded to include sexually explicit messages and conversations, eventually leading to her exposing and touching herself on camera and the respondent exposing his penis. The victim was fourteen at the time – the respondent forty-two. The incidents had a serious impact on the victim and her family.

[27] At the time of sentencing the respondent was forty-four years old, had a partner and young dependants. Although he had joint custody of his children prior

to the charges, his access became supervised and limited after the offences came to light.

[28] The respondent was injured in a motor vehicle accident when twenty-one years old, sustaining a spinal injury. He has chronic medical problems. He struggles with self-harm and suicidal thoughts and night terrors. He is under the care of a psychiatrist and clinical therapist and has long-standing mental health issues that require ongoing therapy.

[29] The judge considered the principles of sentencing as set out in s. 718 of the *Code* along with the objectives of sentencing. She specifically referenced s. 718.01 and the involvement of persons under the age of eighteen. She acknowledges *Friesen* and increased penalties in the *Code.* She says they weighed heavily in her analysis. She considered the need to protect children from exploitation and the risk associated with technology. Technology affords predators unprecedented access to child victims. She referenced *R. v. Rasiah*, 2021 ONCJ 584 and the comments therein. In *Rasiah* the court concluded a CSO would not address the objectives of sentencing and imposed eighteen months custody and two years probation. The judge here noted a distinction based on the seriousness and length of the abuse. In *Rasiah* the abuse continued for a period of two years and eight months versus two weeks here.

[30] The judge took into account the fact the respondent is the step-uncle of the victim and was in a position of trust. She noted the respondent has cooperated in treatment regimes in a "very meaningful way" and respected stringent release conditions for a fairly lengthy period of time. He has no prior criminal record.

[31] The judge said she had little doubt the respondent's mental health challenges played at least some contributory role in the offence. There was no evidence of intimidation or coercion.

[32] Post offence the respondent was said to be committed to his mental health therapy and the judge commented that this "bodes well for R.B.B.'s participation in other assessment treatment or counselling that may be required as part of the sentence that I will impose". She noted "… rehabilitation is clearly at play here".

[33] The general principle as set out in *R. v. Gladue*, [1999] 1 S.C.R. 688 was noted:

> [36] … As a general principle, s. 718.2(e) applies to all offenders, and states that imprisonment should be the penal sanction of last resort. Prison is to be used only where no other sanction or combination of sanctions is appropriate to the offence and the offender.

[34] The judge placed primacy upon denunciation and deterrence but said she had to balance that in a way that respects other principles of sentencing so as to achieve proportionality, considering the respondent's moral culpability. She said this case lacked some of the aggravating factors of other cases. The respondent did not initiate the communication. Initially his conduct was well-meaning, distinguishing it from cases where offenders troll the internet seeking out victims. There was no plan to meet to engage in sexual activities. There are no remnant videos or photos lurking on the internet.

[35] Having been satisfied the respondent could safely serve the sentence in the community she went on to find that a CSO would be consistent with the principles of proportionality and parity.

[36] She noted this was a difficult case in terms of sentencing, and wrestled with the issue of whether a CSO could properly address the objectives of denunciation and deterrence. She said she was "…mindful of the *jurisprudence* which says this short (sic)- sort of disposition is unusual.", while taking note that, in *Proulx,* the Supreme Court of Canada said a conditional sentence is authentically punitive. She also took note of the comment in *Proulx* that for certain categories of offences, including sexual offences against children, offenders are generally ineligible for a CSO. She relied heavily on *Hood*, where I noted two children were involved and there was, in-person contact, and sexual activity.

[37] The judge had the benefit of having heard and considered the evidence. She fully understood what transpired as between the victim and the offender.

[38] The appellant submits the sentencing judge focussed on the absence of aggravating factors, saying the judge effectively treated their absence as a mitigating factor. I respectfully disagree. The judge distinguished authorities cited by the Crown by pointing out the absence, in the accused's case, of aggravating factors that existed in the cited cases. To distinguish a case based on facts is not an error in principle. In fashioning the sentence, the judge carefully considered the circumstances of this offence, and the accused's responsibility for it.

[39] I am not convinced there is a single road map confining sentencing judges to a defined path of reasoning in cases such as this. It matters not whether you start with the presumption of carceral sentence, or in the end do an analysis as to whether a carceral sentence is required. Here the judge was aware that carceral sentences were the norm and she struggled to ensure an appropriate sentence was imposed. Like the sentencing judge, I am mindful of the comments of Chief Justice Lamer in *Proulx*:

> 81 In my view, while the gravity of such offences is clearly relevant to determining whether a conditional sentence is appropriate in the circumstances, it would be both unwise and unnecessary to establish judicially created presumptions that conditional sentences are inappropriate for specific offences. Offence-specific presumptions introduce unwarranted rigidity in the determination of whether a conditional sentence is a just and appropriate sanction. Such presumptions do not accord with the principle of proportionality set out in s. 718.1 and the value of individualization in sentencing, nor are they necessary to achieve the important objectives of uniformity and consistency in the use of conditional sentences.

[40] To force judges to adopt the concept of having to start with carceral sentences as a starting point introduces a rigidity Chief Justice Lamer warned against in *Proulx.* It is enough that a sentencing judge be mindful of the comments in *Friesen,* and the purpose and intent of Parliament when increasing the maximum sentence. If at the end of the day, the sentencing judge acknowledges and accounts for those considerations, appellate review should show the deference accorded to all sentences.

[41] The conviction was entered on October 14, 2022, but the decision on sentencing was not rendered until February 23, 2023. In a thorough and considered oral decision, the judge considered the need for denunciation and deterrence as well as the Supreme Court of Canada's directions in *Friesen.* Her decision reflects a full understanding of the facts and circumstances of this case. She referenced ss. 718.1 and 718.2 of the *Criminal Code* and the need to denounce and deter unlawful sexual conduct involving children and the need to separate offenders where necessary. In her reference to s. 718.2 she said she took "… into account a number of other considerations. Specifically, any relevant aggravating and mitigating factors as well as the principles of parity, restraint and totality". Taking into account all available sanctions other than imprisonment "… that are reasonable in the circumstances, …"

[42] She referenced *Friesen* and the need to protect children from wrongful exploitation, recognizing the unprecedented access technology offers predators in terms of access to children. The judge considered the victim touching herself on camera and even though it was "… outside the strict scope of the offence …" concluded it was an aggravating factor. She also considered the age of the victim, the impact on the victim and her personal circumstances "… vis-à-vis [her] emotional and mental health challenges …" This was also noted as a breach of a trust.

[43] On the mitigation side of the ledger the judge took into account the respondent's support network, his willingness to cooperate in treatment in a "… very meaningful way". She also considered the length of time he was on stringent release conditions, the lack of a criminal record, and the fact that while his activity was opportunistic, it was not his original intention. As I referenced above, she also noted the relatively short duration of the offence and that it stopped when the victim said it should stop.

[44] After referencing *Proulx* she was satisfied a lengthy CSO with restrictive conditions would address denunciation and deterrence. The CSO is reflective of the seriousness of the offences. The sentence she imposed mandates the respondent to participate in assessment, counselling and treatment for a total of four years. That combined with pretrial conditions has the respondent within the control of the court for more than six years. That is much longer than the carceral sentence proposed by the appellant. It includes mandatory treatment and assessment provisions directed at mitigating the risk of reoffending.

[45] I am satisfied the sentencing judge did not err in principle and a deferential consideration of the sentence satisfies me the sentence is fit and the appeal should be dismissed.

Disposition

[46] I would grant leave but dismiss the appeal.

Scanlan J.A.

Concurred in:

Wood C.J.N.S.