Citation: *R. v. D.A.D.*, 2021 YKTC 20

Date: 20210519
Docket: 19-00426A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Cozens

REGINA

v.

D.A.D.

Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Appearances:
Sarah Bailey — Counsel for the Crown
Gregory Johannson — Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS C.J.T.C. (Oral): D.A.D. has entered a guilty plea to having committed a s. 151 offence. The victim, J.B., was 15 years of age at the time of the offence. D.A.D. had entered a not guilty plea and the trial commenced on December 10, 2020. After the Crown's first witness, who was not J.B., testified, D.A.D. withdrew his not guilty plea to the s. 151 charge and entered a guilty plea.

[2] Submissions on sentence were heard on March 5, 2021, and a decision was reserved until today's date.

Facts

[3] In the summer of 2019, J.B. was working as a summer student. She was staying at her aunt's residence located at one side of a duplex. D.A.D., who was J.B.'s cousin, was residing on the other side of the duplex with his partner and their children.

[4] D.A.D. also worked under the authority of J.B.'s supervisor.

[5] On August 5, 2019, D.A.D. invited J.B. to come over to his residence. It was not unusual for J.B. to hang out with D.A.D., and she went over. D.A.D.'s partner and children were not home at the time. D.A.D. asked J.B. if she wanted to spend the night at his residence. J.B. received permission from her aunt to do so.

[6] D.A.D. and J.B. were sitting on the couch cuddling while they watched a movie. D.A.D. fell asleep but later woke up. He placed his hand on J.B.'s vaginal area over the shorts she was wearing. D.A.D.'s hand was moving over her crotch. J.B. pretended to be asleep. She rolled over and D.A.D. stopped touching her.

[7] J.B. subsequently disclosed what had happened and D.A.D. was arrested and charged.

Victim Impact

[8] Victim Impact Statements were provided by both J.B. and her mother.

[9] It is clear that this incident has had a significant and profound ongoing negative impact on J.B. It appears that her life has quickly spiralled in a downwards trend. There has also been a significant negative impact on J.B.'s mother, in large part due to

watching her daughter descend into a destructive lifestyle. This negative impact on both is due, in part, to the breach of trust aspect of this offence, and the consequential fracturing of the extended family dynamic.

Positions of Counsel

Crown

[10] Crown counsel submits that a custodial disposition of four months, to be followed by 18 months' probation, would be the appropriate disposition.

[11] Counsel notes that the guilty plea was only entered partway into the trial, thus lessening its mitigating effect somewhat.

[12] Counsel recognizes that there are ***Gladue*** factors present in D.A.D.'s life circumstances, however notes that he was raised in a supportive family, has a grade 12 education, and does not appear to struggle with substance abuse.

[13] Counsel further notes that D.A.D.'s attitude towards the offence is illustrative of a lack of insight on his part.

[14] Counsel submits that this offence, committed in these offences, warrants a sentence above the mandatory minimum of 90 days, therefore the Court should not engage in an analysis as to the constitutionality of s. 151(b).

[15] If the Court chooses to engage in such an analysis, counsel submits that the reasoning in ***R.*** v. ***Pye***, 2019 YKTC 21, declaring s. 151(b) unconstitutional, should be reconsidered in light of the decision in ***R.*** v. ***Friesen***, 2020 SCC 9. Counsel states that

following ***Friesen***, “a 90-day custodial sentence for sexually touching a child should not be considered grossly disproportionate in any circumstances”.

[16] Counsel concedes that if a s. 151(b) is found to infringe s. 12 of the *Charter*, it cannot be saved by s. 1.

Counsel for D.A.D.

[17] Counsel for D.A.D. submits that a sentence of nine months, to be served conditionally in the community, would be an appropriate disposition.

[18] Counsel submits that the reasoning in ***Pye*** remains valid, notwithstanding what was stated by the Court in ***Friesen***.

Circumstances of D.A.D.

[19] Information about D.A.D.'s personal circumstances was provided through a Pre-Sentence Report (“PSR”), and the submissions of counsel.

[20] D.A.D. is 30 years of age. He is a member of a Yukon First Nation. He has no criminal record.

[21] D.A.D grew up in a stable and supportive home, with parents who ensured that he and his one sibling never lacked basic necessities. He was involved in cultural and athletic activities while growing up.

[22] He witnessed limited substance abuse in the home, acknowledging that his father, at times, had some struggles with alcohol and substance use. His father is not of Indigenous ancestry. D.A.D.'s parents have been married for 35 years.

[23] His maternal grandparents attended residential school. D.A.D. recounted how his mother would cry when telling him about the trauma that his grandparents experienced attending residential school.

[24] While D.A.D.'s mother did not attend residential school, she recounted how it impacted not only her parents' ability to parent, but how the community was also intergenerationally negatively impacted.

[25] D.A.D. recalls episodes where he was the victim of bullying and racial discrimination while attending school in Whitehorse. He was suspended on numerous occasions for fighting or truancy. He dropped out of school in grade 11. Subsequently, through attendance at the Whitehorse Individual Learning Centre, he was able to complete grade 12. D.A.D. states that his experiences with bullying left him lacking in self-confidence.

[26] D.A.D. is currently unemployed. He is the primary caregiver for his two young children. He has been employed with his First Nation for approximately five years until he resigned following this incident coming to the knowledge of his First Nation. D.A.D. now regrets having resigned, as he believes he may have been able to maintain his employment in some capacity. He states that he made the decision to resign as a result of the stress he was under at the time.

[27] D.A.D. has two young children with his partner, N.H., and is the stepfather to N.H.'s older but still young daughter. He and N.H. are currently separated. Their relationship deteriorated after D.A.D. was charged in relation to this incident.

[28] D.A.D. continues to provide support to his partner and his children by assisting with childcare, house chores, groceries, and budgeting. Currently, he is unable to contribute financially due to his lack of an income, other than what he receives from social assistance. He is currently a stay-at-home parent as N.H. continues her studies.

[29] N.H. has expressed concern about the impact these charges have had on her and her family, and about the further impact that a period of incarceration for D.A.D. would have. She places much of the blame for her and her family's present circumstances on J.B. She states that D.A.D. is a very good and loving father.

[30] D.A.D. states that he experiences struggles with anxiety and depression due to the stress of the situation, as well as other physiological and medical difficulties. He has also withdrawn from community and cultural involvement due to feeling stigmatized within the community.

[31] D.A.D. does not have any issues related to the use of alcohol or drugs.

[32] He was sexually assaulted as a teenager and attended counselling at the time. He has attended sessions with a mental health counsellor since this incident.

[33] Support letters were provided by D.A.D.'s sister, aunt, cousin, mother, and N.H. These letters support D.A.D. as being caring, loving, a good person, a strong community member and leader, and a significant source of support within his extended family unit. Concern is expressed as to how this incident has negatively impacted his life and role in his family and the community. There is a general disbelief that D.A.D. could have committed this offence.

[34] D.A.D. continues to have the support of his family, and at least to some extent the support of his community.

[35] No risk assessment was provided to the Court at the time of sentencing.

[36] D.A.D. has been compliant with his release conditions, initially imposed in October 2019, and then revised in January 2020.

[37] D.A.D. states that he is ashamed of his actions and is prepared to accept responsibility for them, although he does to some extent also say that J.B. was a "willing participant" in the sexual contact, thus engaging in what is generally construed as "victim blaming".

Analysis

[38] In ***Pye***, Ruddy J. ruled that s. 151(b) was unconstitutional. Ruddy J. firstly considered whether an appropriate sentence would be one that was either under the 90-day minimum set out in s. 151(b), or a sentence of imprisonment that could be served conditionally in the community. If either such sentence was not appropriate, there would be no need to rule on whether s. 151(b) was unconstitutional.

[39] In ***Pye***, the 21-year-old offender had sexual contact on two occasions with a 14-year-old victim. The second occasion, at a time when Mr. Pye was certainly aware of the victim's age, involved sexual intercourse. The victim, who was unable to consent to the sexual contact by virtue of her age, was not opposed to the sexual contact occurring.

[40] Ruddy J. found that a sentence in the circumstances of that case allowed for the imposition of a conditional sentence of 12 months.

[41] Ruddy J. further found, on the basis of her consideration of reasonable hypotheticals and jurisprudence, that the mandatory minimum punishment of 90 days' incarceration violated s. 12 of the *Charter*, and that it could not be saved by s. 1.

Appropriate Sentence

[42] This case involves an unwanted sexual touching of the 15-year-old victim by her 28-year-old cousin. J.B. should have felt safe in the presence of D.A.D. from being sexually interfered with. She was not in fact safe. There is an element of a breach of trust in these circumstances.

[43] The sexual assault was on the lower end of the scale, being over the clothes and being one brief act without any persistent behaviour. I say this, not to indicate that the sexual interference was not serious, but to place the actual sexual interference on the continuum of sexual offences, in order to allow for it to be distinguished from other instances of sexual contact that may be more or less intrusive in nature, viewed objectively.

[44] In saying this, I appreciate that victims of a sexual offence are impacted differently, and the intrusiveness of the sexual offending for each victim has a subjective component that may be quite different in each case, and that such a negative impact may not follow an objectively viewed continuum.

[45] In ***R.*** *v.* ***C.G.J.***, 2019 BCPC 252, the 18-year-old offender made persistent efforts over a two-day period to engage the 13-year-old victim in contact of a sexual nature. The victim was reluctant to do so and expressed this reluctance to the offender. On the second day, the offender followed the victim to a location where he had sexual contact over her expressed objections. This contact included kissing her, attempting unsuccessfully to touch the victim's vagina under her clothing, and grabbing her buttocks.

[46] The offender and the victim were both Indigenous. Taking into account all the circumstances, MacCarthy J. determined that an appropriate sentence would be a custodial disposition of five months to be served conditionally in the community, followed by a probation order of 30 months.

[47] MacCarthy J. held that s. 151(b) was unconstitutional, and therefore imposed the above sentence.

[48] The circumstances and intrusiveness of the sexual contact in the ***C.G.J.*** case are more serious than in the case before me. The age of D.A.D. and position of familial trust he occupied, however, are more serious than was the case in ***C.G.J.***

[49] I have reviewed the cases filed and the cases cited within these cases. Certainly, the Crown's submission for the imposition of a four-month custodial disposition is within the appropriate sentencing range. The nine-month sentence, to be served conditionally in the community, proposed by counsel for D.A.D. is, in my view, at the high-end of the range, and certainly I consider that a sentence of nine months of actual incarceration would exceed the general range of sentence in the circumstances

of this case. I appreciate, however, that a conditional sentence can be longer than the sentence would be if served in a custodial facility rather than in the community.

[50] The real issue at this stage is whether a conditional sentence would be appropriate.

[51] Section 742.1 requires that, before the imposition of a conditional sentence, the Court must be satisfied:

> …that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing.

[52] I am satisfied that allowing D.A.D. to serve his sentence in the community would not endanger the safety of the community. I appreciate that I do not have a risk assessment before me, however, given his age, lack of criminal record, the other antecedents and information before me, as well as the circumstances of this offence, including his at least partially shifting of the blame to J.B., I consider his risk for reoffending to be low. Certainly, his compliance with conditions since October 2019 would be supportive of his being at a low risk to reoffend.

[53] Denunciation and deterrence are the primary purposes of sentencing applicable to this offence. As J.B. is a vulnerable person under s. 718.04, this is statutorily prescribed.

[54] It is also a statutorily aggravating factor under s. 718.2(a)(ii) that J.B. was related to D.A.D. and further under s. 718.2(a)(ii.1) that J.B. was under the age of 18.

[55] Rehabilitation remains, nonetheless, as a principle to be considered, although it is subrogated to the principles of denunciation and deterrence.

[56] As D.A.D. is Indigenous, the application of s. 718(2)(e) requires me to consider all other sentencing sanctions than imprisonment, that are reasonable in the circumstances and consistent with the harm done to J.B., her mother, and to the community.

[57] The Supreme Court of Canada in ***R.*** v. ***Gladue***, [1999] 1 S.C.R. 688, ***R.*** v. ***Ipeelee***, 2012 SCC 13, and other cases, has made it clear that courts must comply with the statutory requirements of s. 718.2(e). I have spoken at length in cases such as ***R.*** v. ***Quash***, 2009 YKTC 54, ***R.*** v. ***Quock***, 2015 YKTC 32, ***R.*** v. ***Charlie***, 2014 YKTC 17, and others, about this obligation when sentencing Indigenous offenders. As such, I do not intend to conduct the same analysis here for the purposes of this decision.

[58] I appreciate that D.A.D.'s life and upbringing are not marked by the same dysfunction so often seen in that of Indigenous offenders that come before me. He has been fortunate to have been raised in a loving, supportive, and relatively stable home environment. However, there is a residential school background of trauma in D.A.D.'s family, and it would be wrong for me to discount the application of s. 718.2(e) due to the lack of a direct connection between D.A.D.'s background and his offending behaviour. The Supreme Court of Canada has made that clear.

[59] I reviewed and considered ***Friesen*** and the Court's pronouncement about the serious nature of sexual offences against children. Certainly, the Court has sent a

message that these offences need to be treated with sanctions that address the increasingly recognized gravity of such offences.

[60] To this extent, general sentencing ranges for offences against children that existed pre-***Friesen*** may no longer be appropriate. Sentences which recognize the harm suffered by child victims, and the need to denounce such crimes and deter individuals from committing them, will in many cases be more severe than previously imposed.

[61] In my view, however, ***Friesen*** does not therefore now require that there must always be a sentence of incarceration in a custodial facility for sexual offences against children, thus eliminating the applicability of the previously decided cases which have held s. 151(b) to be unconstitutional.

[62] All of the purpose, principles, and objectives of sentencing must be balanced in the unique circumstances of each case in order to achieve a just and appropriate sentence, including a greater awareness of the severity of the harm caused by sexual offences against children.

[63] In my view, imposing a sentence on D.A.D. that requires him to be incarcerated in a custodial facility would be contrary to the purpose, principles, and objectives of sentencing. He is a relatively young Indigenous offender with no prior criminal history. I do not believe that a period of incarceration in a custodial facility is necessary to satisfy the need to emphasize denunciation and deterrence, both specific and general. In my view, a sentence of incarceration for D.A.D. would, in fact, be contrary to the purpose,

principles, and objectives of sentencing, and to the directions from the Supreme Court of Canada when sentencing Indigenous offenders.

[64] Taking into account all the circumstances of the offence in D.A.D., including the harm caused to J.B., the applicable purpose, principles, and objectives of sentencing as set out in ss. 718 to 718.2, and the submissions of counsel, I am satisfied that a custodial sentence to be served conditionally in the community, followed by a period of probation, is the appropriate disposition.

[65] This, therefore, requires me to consider the constitutionality of s. 151(b).

[66] I agree with the reasoning in the decision of Ruddy J. in ***Pye***. The issue for me here is whether the decision in ***Friesen*** would cause me to look at ***Pye*** differently and, therefore, as a result find that s. 151(b) is not unconstitutional.

[67] In my opinion, the reasoning in ***Friesen*** does not alter the decision in ***Pye***. The reasonable hypotheticals referred to by Ruddy J., and also in many of the cases that deal with s. 151(b) and another analogous offences with mandatory minimum sentences for sexual offences against youth and children, in my opinion, still make s. 151(b) unconstitutional for the reasons stated by Ruddy J. and in other cases. I decline to rule differently than was ruled in ***Pye***.

[68] ***Friesen*** certainly requires courts to take into consideration the gravity of harm suffered by child victims of sexual offences, and the increasing recognition of the depth and scope of this harm, and to apply this consideration in a meaningful way when sentencing offenders and ***Friesen*** may, in many cases, alter the general applicable

range of sentences that exist in cases that pre-date it. It does not, however, in my view, have the effect of making s. 151(b) constitutional.

[69] I find s. 151(b) to be unconstitutional and in violation of s. 12 the *Charter* and not saved by s. 1.

[70] Therefore, I am imposing a custodial disposition on D.A.D. that he will be allowed to serve conditionally in the community. The question is what the length of that sentence will be.

[71] I appreciate that the Supreme Court of Canada in ***R.*** v. ***Proulx***, 2000 SCC 5, has made it clear that a conditional sentence can be imposed that is longer than what a sentence of incarceration for the offence would be.

[72] In ***R.*** v. ***G.K.***, 2021 YKTC 17, released yesterday, Chisholm J. was sentencing an offender, after conviction at trial, for having committed a s. 153(1)(a) offence.

[73] Section 153(1)(a) reads:

> 153 (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who
>
> (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person;

[74] The punishment, as the Crown proceeded summarily, as set out in s. 153(1.1)(b) is a minimum sentence of 90 days. The preconditions include that the victim be 16 or 17 years old, as the victim in that case was.

[75] The facts in ***G.K.*** are as follows, citing paras. 4 to 8:

> 4 G.K. was 59 years old at the time of these offences. He is a long-time member of a small community, approximately a two hour drive from Whitehorse. He began working at the village's recreation centre in 2000. In 2018, he became the recreation director for the village, and worked out of the recreation centre. He hired the victim, K.B., as the youth program coordinator in the summer of 2018. She was 17 years old. She reported to G.K., and worked in the recreation centre.
>
> 5 On August 8, 2018, she was working in the kitchen area making snacks for children attending the recreation centre. G.K. entered the kitchen and asked her about her day. She told him that she had recently broken up with her boyfriend. He then questioned her about her love life and her sex life. When asked about her sex life, she testified that she did not know what to say and just answered that it was "o.k.".
>
> 6 K.B. testified that G.K. came towards her from behind and put his hand on her stomach and started rubbing it. He kissed her neck from behind on two occasions, before leaving the kitchen with a smile on his face. She became upset, and ultimately went outside to have a cigarette. Soon thereafter, G.K. joined her and made a sexual comment to her, but this line of conversation changed when other people approached them.
>
> 7 K.B. and G.K. returned inside the recreation centre. She went into the games room/common area and G.K. entered his office. As she did not feel right with what had occurred, she went to G.K.'s office to tell him that she would like the rest of the day off. After hearing her request, he asked her to talk with him upstairs.
>
> 8 Once they were on the second floor, G.K. opened the door of a storage room and let her in. He followed her into the room and closed the door. He told her that if she ever wanted to have sex to let him know. He also told her that she could not tell his wife or anybody else about it. As K.B. did not know how to respond, she replied that she would think about it. He also mentioned that his relationship with his wife was not working for him and that they were not having sexual relations often. G.K. hugged her, and kissed her two more times on the neck before opening the door. She left the building soon after going back downstairs.

[76] Counsel for G.K. argued that s. 153(1.1)(b) was unconstitutional as a violation of s. 12 of the *Charter*. Chisholm J. followed the analytical process set out in ***R.*** v. ***Nur***,

2015 SCC 15, and as summarized in ***R.*** v. ***Swaby***, 2018 BCCA 416, at para. 62, in considering the constitutionality of s. 153(1.1)(b).

[77] Firstly, Chisholm J., after extensive analysis of other sentencing authorities and the circumstances of the case, determined that a conditional sentence would be an appropriate disposition.

[78] He then considered the constitutionality of s. 153(1.1)(b), and found it to be unconstitutional through his analysis at paras. 63 to 86. Chisholm J. then sentenced G.K. to a term of six months in custody to be served conditionally in the community, to be followed by two years of probation.

[79] Unlike G.K., D.A.D. is an Indigenous offender with no criminal record. G.K. had a dated and unrelated record. G.K. involved a statutory breach of trust as an employer of the victim, unlike the case of D.A.D. The age gap between G.K. and the victim was much greater than between D.A.D. and J.B.

[80] The actions of G.K. were more persistent, and, besides the verbal comments, involved more instances of physical contact than are present in the case before me, although the nature of the actual touching involved the stomach and the neck, rather than the vaginal area. His actions were also considered to be rather spontaneous, without any grooming, and as being two incidents of short duration that occurred in rapid succession.

[81] G.K. was convicted after trial and the victim had been required to testify, unlike D.A.D., whose guilty plea on the day of trial was nonetheless before J.B. was required

to testify. I recognize in saying this, that the stress of J.B. being prepared to testify until the last minute, distinguishes the mitigating impact as compared to an earlier guilty plea which would have spared J.B. this stress.

[82] D.A.D. was still, as an older familial member of J.B., in a relationship with J.B. that she should have been able to trust her own safety within.

[83] J.B. was under the age of 16, making her a more vulnerable victim based on age alone, and without considering the individual characteristics of J.B. and the victim in ***G.K.,*** who also filed a Victim Impact Statement setting out the negative impacts she has suffered as a result of the offence against her.

[84] In balancing the circumstances of the case before me, and the circumstances in the ***G.K.*** case, albeit a different charge — although not lesser, in my view — as well as other sentencing authorities, and the purpose, principles, and objectives of sentencing set out in ss. 718 to 718.2, I find that an appropriate sentence is that of six months' custody to be served conditionally in the community on the following terms and, with respect to terms, subject to any submissions of counsel:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

4. Remain within the Yukon unless you have written permission from your Supervisor or the court;

5. Notify the Supervisor, in advance, of any change of name or address, and, promptly, of any change of employment or occupation;

6. Have no contact directly or indirectly or communication in any way with J.B. and P.B., except with the prior written permission of your Supervisor and with the consent of J.B. and P.B. in consultation with Victim Services;

7. Do not go to any known place of residence, employment or education of J.B. or P.B. except with the prior written permission of your Supervisor and with the consent of J.B. and P.B. in consultation with Victim Services;

8. Reside as approved by your Supervisor and do not change that residence without the prior written permission of your Supervisor;

9. For the first four months of this order, at all times, you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor. You must answer the door or the telephone to ensure that you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;

10. For the last two months of this order, abide by a curfew by being inside your residence or on your property between 10:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Supervisor. You must answer the

door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

11. Not possess or consume alcohol and/or illegal drugs that have not been prescribed for you by a medical doctor;

12. Not attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off sales, bar, pub, tavern, lounge or nightclub; and

13. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, for any issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition.

[85] I have considered s. 161(1), however, I do not believe that in the circumstances of this offence and this offender that such an order is required.

[DISCUSSIONS]

[86] I will add this to the house arrest condition (clause 9): except with the prior written permission of your Supervisor, including such times as are deemed appropriate for obtaining of necessities for yourself and your children.

[87] The sentence will be followed by a period of probation of 15 months on the following terms:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

5. Notify the Probation Officer, in advance, of any change of name or address, and promptly, of any change of employment or occupation;

6. Have no contact directly or indirectly or communication in any manner with J.B. and P.B. except with the prior written permission of your Probation Officer and with the consent of J.B. and P.B. in consultation with Victim Services;

7. Do not go to any known place of residence, employment or education of J.B. or P.B. except with the prior written permission of your Probation Officer and with the consent of J.B. and P.B. in consultation with Victim Services;

8. Report to a Probation Officer immediately upon completion of your conditional sentence, and thereafter, when required by the Probation Officer and in the manner directed by the Probation Officer; and

9. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for any other issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

[88] Those are all the terms of the probation order.

[89] There will be an order pursuant to s. 487.051(2) that D.A.D. provide a sample of his DNA.

[90] There will be an order pursuant to s. 490.012 requiring D.A.D. to comply with the *Sex Offender Information Registry Act* for a period of 10 years.

[91] I have considered whether I should impose a s. 110 order, but I decline to do so.

[92] I impose a victim surcharge of $100. D.A.D. will have 12 months to pay this.

[DISCUSSIONS]

[93] Stay of proceedings on Count 1.

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COZENS C.J.T.C.