

Citation: *R. v. Tracey*, 2023 YKTC 5

Date: 20230123
Docket: 21-00339A
21-00381B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REX

v.

GRAHAM HOWARD TRACEY

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

Appearances:
Noel Sinclair
David C. Tarnow

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] RUDDY T.C.J. (Oral): Graham Tracey is before me for sentencing in relation to three counts of touching a person under the age of sixteen for a sexual purpose contrary to s. 151 of the *Criminal Code*. Guilty pleas were entered on March 11, 2022. Sentencing was originally scheduled for June 2022, but Mr. Tracey suffered a stroke and other medical issues which led to a number of adjournments. The sentencing hearing finally proceeded on January 10, 2023.

Facts

[2] The Agreed Statement of Facts filed as exhibit 1 of these proceedings sets out a series of offences involving four separate female victims, all of Indigenous heritage. The girls were eight or nine years of age at the time Mr. Tracey's crimes came to light. All offences occurred at Mr. Tracey's residence primarily when the victims were there for a sleepover with Mr. Tracey's daughter and entrusted to the care of Mr. Tracey and his spouse.

[3] Before elaborating on the specific facts, I note that, to protect the victims, the Court has ordered a ban on publication of any information that would tend to disclose their identity. For this reason, the Agreed Statement of Facts refers to each victim by their initials rather than full names. However, as the offences took place in a small community, for the purposes of this decision, and out of an abundance of caution, I will refer to each of the victims by the random, anonymized initials of A.B., C.D., E.F., and G.H., assigned based on the order in which they appear in the Agreed Statement of Facts. In other words, the first victim identified will be referred to as A.B., the second as C.D., and so on.

[4] I will also not be identifying the particular community nor the name of the local First Nation in this decision. This choice is not intended in any way to be disrespectful. Indeed, I acknowledge the extremely important contribution the families of the victims, the community, and the First Nation have made to these proceedings. Rather, I am choosing to limit the inclusion of as much potentially identifying information as is

possible in order to protect the victims, recognizing that this decision will be a matter of public record.

[5] Turning to a brief overview of the facts outlined in the Agreed Statement of Facts, on August 6, 2021, A.B. was at Mr. Tracey's home for a sleepover. While watching his daughter play a video game, Mr. Tracey put his hand on top of A.B.'s vagina over her clothing, making A.B. both uncomfortable and frightened. Eventually, Mr. Tracey removed his hand from A.B. and left the room.

[6] Later that same evening, Mr. Tracey entered the room where his daughter and A.B. were sleeping. He woke A.B. when he put his hand down her pants, inside her underwear, and penetrated her vagina with his fingers. Mr. Tracey then pulled A.B.'s pants and underwear down, spread her legs, and put his tongue inside A.B.'s vagina. A.B. pretended to be asleep, eventually turning her back to Mr. Tracey to make him stop, at which point, he left the room.

[7] A.B. texted her father at approximately 4:00 a.m. relaying what had happened. Upon receiving the message, he arranged for a family member to pick up A.B. and take her to the nursing station, where he met them.

[8] The police were called. They seized A.B.'s clothing for forensic DNA testing. A.B. was taken to the hospital in Whitehorse for a forensic sexual assault examination conducted by a pediatrician.

[9] A.B. provided a statement to police in which she disclosed that Mr. Tracey had touched her many times in the past, including touching her chest under her shirt and her vagina beneath her underwear at times when he may have believed her to be asleep.

[10] On November 25, 2021, forensic testing identified Mr. Tracey's DNA on the interior front center of A.B.'s underwear.

[11] Following A.B.'s disclosure, several friends of Mr. Tracey's daughter were interviewed, and three additional victims were identified.

[12] C.D. disclosed three separate occasions when she was sleeping over at Mr. Tracey's residence when he put his hand down her pants, into her underwear and touched her vaginal area. Each occasion was before bedtime when C.D. was awake.

[13] E.F. disclosed that Mr. Tracey touched her vagina with his hands over her clothing on more than one occasion when she was either visiting Mr. Tracey's daughter for the day or staying for a sleepover. On one occasion, Mr. Tracey touched E.F.'s vagina over her clothes while she was sleeping, causing her to wake up. She pushed his hand away and he stopped. On another occasion, Mr. Tracey touched E.F.'s vagina over her clothing while she was playing a video game with Mr. Tracey's daughter.

[14] G.H. disclosed that Mr. Tracey touched her on one occasion in the preceding year when she was at Mr. Tracey's home for a sleepover. E.F. and Mr. Tracey's daughter were watching a movie when Mr. Tracey came into the bedroom, sat on the bed beside E.F. and started to rub her back and the side of her chest under her shirt. Mr. Tracey admits that this was for a sexual purpose. E.F. pushed Mr. Tracey away

and moved to the other side of the bed, to put Mr. Tracey's daughter between her and Mr. Tracey.

[15] While the time frame over which the offences were committed is not entirely clear from the Agreed Statement of Facts, it would appear that they occurred over at least a matter of several months, if not longer, as some of the victims had begun having sleepovers at Mr. Tracey's home from as early as age five or six.

Background

[16] Mr. Tracey's background and current circumstances are outlined in a Pre-Sentence Report ("PSR") prepared for the original sentencing date of June 30, 2022, and an update to the PSR prepared for the ultimate hearing date of January 10, 2023.

[17] Mr. Tracey is currently 53 years old.

[18] While born in British Columbia, Mr. Tracey's family moved to the Yukon when he was a toddler. Other than a two-year period spent in British Columbia while his parents were separated, Mr. Tracey grew up in the community where the offences occurred.

[19] Other than the period of separation referred to, Mr. Tracey seems to have been raised in a close and supportive family. There is no indication of any childhood exposure to substance abuse or violence. His parents owned and operated a prominent business in the community, requiring them to work long hours. Mr. Tracey and his siblings were each expected to contribute by working for the business.

[20] As one of the few non-Indigenous students in the community, Mr. Tracey says he experienced some “minor bullying” in school, which he describes as “nothing too severe”.

[21] Mr. Tracey obtained his high school diploma in the community and went on to complete one year of a two-year Computer Management Program at Yukon College, before accepting a position as an Electronic Technician with the Royal Canadian Navy. He spent time in Whitehorse working for a company specializing in the installation of residential and commercial security systems, before returning to the community where he was contracted by the First Nation to perform IT work. When the position was filled by a First Nation citizen, Mr. Tracey moved back to Whitehorse where he worked for the Council of Yukon First Nations as a Network Administrator for 13 years, commuting between Whitehorse and the community where his family resided.

[22] Mr. Tracey ultimately left his position to move back to the community as a result of his partner’s medical issues. He returned to work for the family business which was being run by his sister.

[23] Once these charges were laid, Mr. Tracey relocated to Whitehorse where he was able to continue working remotely for the family business on a part-time basis until his stroke in June 2022. In August 2022, his sister sold the family business. Mr. Tracey is currently unemployed and residing at the Connective Supervised Housing and Reintegration Program.

[24] Mr. Tracey is the father of three children, an adult son from his first marriage, and he and his current partner have two daughters aged 9 and 20. His partner has provided

a letter in which she describes Mr. Tracey as “a kind and caring person”, who “is always willing to put himself last in order to make sure his family is safe and healthy”.

[25] Mr. Tracey’s older sister has also provided a letter of support. She believes that Mr. Tracey did not receive the nurturing he required as a child because of the demands of the family business, and notes he experienced bullying and ridicule in school based on both race and his level of intelligence. She describes Mr. Tracey as “a very honest, trustworthy, and caring individual. He is empathetic and thoughtful and passionate about people doing the right things” and she “always felt he had a very good moral compass”.

[26] Both Mr. Tracey’s partner and sister express difficulty reconciling the offences Mr. Tracey has committed with who they knew or believed him to be. His sister believes he was suffering from depression and must have been in a “very messed up dark place” to have done what he did.

[27] The person described by Mr. Tracey’s family members and that one would expect based on his level of intelligence and stable background is frighteningly at odds with the offences he has committed. Mr. Tracey has accepted responsibility by way of his guilty pleas and expresses remorse for what he has done, but the PSR indicates that he lacks insight into his offending behaviour and is more focussed on the impact his actions have had on his own life than that of his victims.

[28] Page 12 of the PSR notes the following:

When asked to consider the perceived impacts of Mr. Tracey’s actions on the victims, Mr. Tracey stated that he was ‘not sure’ but that he believes

this process has 'not been easy on them'. Mr. Tracey stated that he is doubtful that his actions have negatively affected anyone who is not a direct victim of the offenses or a family member of the victims. Mr. Tracey reported that he does not believe his actions have negatively impacted the community of [redacted] as a whole or contributed to a reduced sense of community safety.

Victim Impact

[29] Family members of the four victims have very eloquently articulated the devastating impact Mr. Tracey's crimes have had on these children and their families in eight separate Victim Impact Statements. I thank each of them for taking the time to prepare their statements. I can only imagine how painful they were to write. They are difficult to read, more difficult knowing that the fear, the anger, the despair, and the sense of betrayal expressed therein will not soon end for these families, if ever.

[30] A.B.'s father noted that Mr. Tracey and his family were the only people he trusted with his daughter outside of his own parents. He feels a sense of guilt for not having protected his daughter from harm. He has experienced increased feelings of anxiety and anger, and his health has deteriorated. He notes how devastating the court process has been with the focus of delay being on Mr. Tracey's health, seemingly uncaring about the suffering of the victims. It has affected his ability to work.

[31] He further describes the impact on A.B., noting that she suffers from massive anxiety, is unable to sleep independently, has lost interest in many of the things she once enjoyed, and her fear of men has undermined her education.

[32] A.B.'s grandmother notes that A.B.'s fear of men has even affected her previously close relationship with her grandfather. When A.B. stays with her

grandparents, she repeatedly wakes up frightened. She notes that A.B. no longer laughs or smiles, has lost interest in the traditional activities they used to both enjoy, and asks her grandmother to buy oversized clothing as if she wants to become invisible.

[33] A.B.'s grandmother says that this has brought back memories of her own past trauma and she finds herself withdrawing from others, not knowing who to trust in the community.

[34] C.D.'s mother notes intense feelings of shame and guilt. Self-blame has led to a major depression, causing her to push her family away and self-isolate. She has experienced significant medical problems and thoughts of suicide, issues that have been exacerbated by the lengthy court process.

[35] She notes that her previously carefree daughter has become withdrawn, experiencing illness and difficulties sleeping. C.D.'s younger sibling has also been negatively impacted.

[36] C.D.'s father expresses anger and a loss of trust. He has experienced extreme anxiety. His wife's difficulty coping has led him to fear for her safety in addition to his fears for his children. He notes an atmosphere of complete depression in the home and how each member of the family withdrew from each other and everyone else they know. He notes his younger daughter has also been victimized by what happened to her sister, experiencing ongoing nightmares, and she remains withdrawn. While the family is struggling to make the transition back to living, he fears the impact of what happened is slowly killing them.

[37] Both of C.D.'s parents expressed how much more difficult things have been because of the lengthy delay in the court proceedings.

[38] C.D.'s grandmother notes her fear for her granddaughter's safety and her own anger. She has begun overworking to avoid thinking about what happened. She notes C.D., once happy and affectionate, has become fearful and withdrawn.

[39] C.D.'s aunt notes impacts on her mental health as these offences have triggered her own painful memories. She describes the impact on the community, noting fear for their children and a loss of trust, particularly trust in the non-Native community.

[40] E.F.'s father notes that the offence caused his daughter to withdraw from him. He fears for her safety and does not know who to trust. He expresses frustration at the court process, particularly how slowly things have moved. He feels the Court has not given the kids what they need, while the accused gets what he needs.

[41] G.H.'s father describes feelings of extreme anger and hopelessness that he was unable to protect his daughter, having placed her in a situation where she was preyed upon. He notes that this has affected G.H.'s trust in him. He says that G.H. has experienced a loss of self-confidence, has become less outgoing and open to others, and has expressed a sense of shame at what was done to her. She experiences panic attacks, and is distrustful of adult males, to the point that it has negatively impacted her ability to actively participate in a sporting activity to which she has long been devoted.

[42] All of the family members expressed fears about Mr. Tracey returning to the community and how it may impact on the children.

Community Impact

[43] As noted by C.D.'s aunt, the impacts of Mr. Tracey's crimes have extended to the community as a whole. The First Nation, in conjunction with Council of Yukon First Nations, has provided a comprehensive Community Impact Statement ("CIS"). The CIS notes that Mr. Tracey was a trusted and respected member of the community, and his offences have led to feelings of sadness, grief, depression, shock, trauma, broken trust, shame, anger, and vulnerability. People keep their children at home and don't know who to trust. Community members find it difficult to talk about what happened as they do not know how to deal with it.

[44] The offences have led to a decrease in community activity and participation in cultural events. Some community members have been unable to work or considered leaving the community. For others, the offences have triggered past trauma. Overall, the CIS notes an increased fear for community safety flowing from the broken trust.

[45] The CIS notes a need for resources to address the trauma and support community healing, and expresses concern, not just for the victims and their families, but also for the members of Mr. Tracey's family.

Positions of the Parties

[46] It is against the backdrop of these circumstances of offence, offender, and victims that I must now impose sentence.

[47] Crown and defence take very different positions with respect to the appropriate sentence. While both acknowledge that Mr. Tracey's offences warrant a penitentiary

term, Crown submits that a global sentence of between four and six years would be appropriate, in recognition of the seriousness of the offences and the impact on the victims. Defence counsel argues for the imposition of a two-year sentence, noting Mr. Tracey's acceptance of responsibility and his lack of any prior criminal history.

Legislative Framework

[48] In determining the appropriate sentence, I am mindful of the fact that sentencing for criminal offences occurs within a well-established legal framework set out in Part XXIII of the *Criminal Code*. Of particular note are the sentencing objectives and principles set out in ss. 718 through 718.2.

[49] In terms of sentencing objectives, those most often cited are denunciation and deterrence on the one hand and rehabilitation on the other. In this case, there are several factors which require me to give primary consideration to the objectives of denunciation and deterrence. These include the fact the offences involved the abuse of persons under the age of 18 pursuant to s. 718.01 and the fact the offences involved the abuse of persons who are considered particularly vulnerable because of personal circumstances including because they are Aboriginal and female pursuant to s. 718.04.

[50] Thus, the primary sentencing objectives in this case require the imposition of a sentence that denounces Mr. Tracey's conduct and deters Mr. Tracey and others from committing these types of offences. As Mr. Tracey is assessed at moderate risk of reoffending sexually, this case also requires consideration of the objective of separating an offender from society, where necessary.

[51] In addition to sentencing objectives, the principles of sentencing require me to impose a sentence that is proportionate to the gravity of the offence and the degree of responsibility of the offender, per s. 718.1. This requires consideration of the circumstances of both the offence and the offender. The sentence is to be increased or reduced within the applicable sentencing range based on the aggravating and mitigating factors.

[52] Section 718.2 mandates that a number of factors must be considered as aggravating in making this assessment. They include evidence that the offender abused a person under the age of 18, evidence the offender abused a position of trust, and evidence that the offence had a significant impact on the victims, considering their age and other personal circumstances.

[53] Finally, s. 151 of the *Criminal Code* has a mandatory minimum sentence of one year where there is an indictable election as in this case.

Case Law

[54] Counsel have each provided cases in support of their respective positions.

[55] The three cases provided by the defence include *R. v Hillyer*, 2012 YKSC 34, a 2012 decision of the Yukon Supreme Court in which the offender was convicted, post-trial, of two counts contrary to s. 151 which involved two incidents of him forcing the six- and nine-year-old daughters of his spouse to touch his penis. The Indigenous offender was 43 years of age with a dated and unrelated criminal record. He had a troubled

childhood which included sexual victimization. Balancing the breach of trust and the *Gladue* factors, the Court imposed a sentence of six months plus three years' probation.

[56] In *R. v. P.D.W.*, 2015 BCSC 660, a 2015 decision of the B.C. Supreme Court, the 52-year-old offender, originally charged with six counts, was convicted of two counts, one contrary to s. 151 and one contrary to s. 152. The facts included sending sexually explicit text messages to the 13-year-old friend of his stepdaughter, and performing sexual acts on her while she was intoxicated and staying at his home for a sleepover. These included digital penetration and performing oral sex on her. The accused had no prior record and provided letters of good character. The Court imposed a sentence of 15 months plus two years of probation.

[57] In *R. v. R.T.A.*, 2015 YKTC 24, a 2015 decision of this Court, the 26-year-old Aboriginal offender pleaded guilty to one count contrary to s. 151 which involved approximately 10 incidents of sexual touching, including placing his hand on his five-year-old-daughter's vagina, licking her clitoris and rubbing his penis against her vagina. Noting the offender's young age, remorse, and *Gladue* factors, Cozens J. imposed a sentence of one year plus three years' probation.

[58] There are a number of distinguishing factors in these three cases. While there are some similarities in the nature of the sexual touching, none involved as many victims as in this case. Two of the three involved Indigenous offenders with *Gladue* factors, a mitigating factor that is not applicable in this case. The one non-Indigenous offender was convicted in relation to a single incident.

[59] Most importantly, all three of these cases were decided well before the recent Supreme Court of Canada decision in *R. v. Friesen*, 2020 SCC 9. At para. 5 of the decision, the Court noted:

Third, 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. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.

[60] In this regard, the Court went on to say at para. 35:

...When a body of precedent no longer responds to society's current understanding and awareness of the gravity of a particular offence and blameworthiness of particular offenders or to the legislative initiatives of Parliament, sentencing judges may deviate from sentences imposed in the past to impose a fit sentence (*Lacasse*, at para. 57). ...

[61] The Supreme Court outlines, at length, the devastating and enduring harm of sexual offences when committed against children, including the many articulated by the families of the victims in this case. Courts are urged to consider not just actual and current harm, but also harm that is reasonably foreseeable based on a modern understanding that the impacts of sexual violence on children are far-reaching.

[62] In assessing the degree of responsibility of the offender, the Court in *Friesen*, at para. 90, notes the high moral blameworthiness and writes:

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 (*R. v. Morrison*, 2019 SCC 15, [2019] 2 S.C.R. 3, at para. 153). As L'Heureux-Dubé J. recognized in *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, "As to moral blameworthiness, the use of a vulnerable child for the sexual gratification of an adult cannot be viewed as anything but a crime demonstrating the worst of intentions" (para. 31, quoting *R. v. L.F.W.* (1997), 155 Nfld. & P.E.I.R. 115 (N.L.C.A.), at para. 117, per Cameron J.A. ("*L.F.W. (C.A.)*"). Offenders recognize children's particular vulnerability and intentionally exploit it to achieve their selfish desires (*Woodward*, at para. 72). We would emphasize that the moral blameworthiness of the offender increases when offenders intentionally target children who are particularly vulnerable, including children who belong to groups that face discrimination or marginalization in society.

[63] Courts are still grappling with the appropriate sentencing range in light of the *Friesen* decision. Crown has provided one post-*Friesen* case in support of its position.

[64] In *R. v. G.R.*, 2020 ONSC 7411, a 2020 decision of the Ontario Superior Court of Justice, the 50-year-old offender was convicted post-trial of one count of sexual interference involving three incidents of sexual touching of his partner's nine-year-old daughter which included touching her vagina under her clothing with his fingers and penis. The accused had no prior record and maintained his innocence. The Court imposed a sentence of five and one-half years.

[65] Crown has also provided the 2018 decision of the Yukon Supreme Court in *R. v. D.B.S.*, 2018 YKSC 16, decided before *Friesen*. The Indigenous offender was convicted at trial of two counts of sexual interference involving six incidents committed against his step-granddaughter, which included touching her in the vaginal area under her clothes and underwear. Veale J. imposed a global sentence of two years.

[66] The *D.B.S.* case, in many ways, is the most persuasive of the sentencing decisions provided, at least in relation to assessing the range for multiple incidents of

sexual touching of a single victim where there is a breach of trust. It is a decision of a superior court in this jurisdiction. While it was decided pre-*Friesen*'s direction to increase sentences for sexual offences against children, that is offset by the fact it was a case in which there was no mitigating guilty plea as I have before me. The young complainant was required to testify at both a preliminary hearing and a trial.

Analysis

[67] Applying the legal framework and case law to the case at bar, there are a number of mitigating and aggravating factors which must be considered.

[68] In mitigation, I must consider the fact that Mr. Tracey has entered guilty pleas. As noted by each of the families of the victims, the court process can be unduly stressful and painful for victims. It is even more so when young victims are called upon to testify. A guilty plea and acceptance of responsibility removes that additional stressor. Mr. Tracey has also expressed some degree of remorse for his actions.

[69] Next, I must consider the lack of any criminal history. Defence counsel asks that I not lose sight of the fact that Mr. Tracey has been an otherwise law-abiding and hardworking citizen for the majority of his life. This submission is something of a double-edged sword. On the one hand, there is mitigation in the lack of any prior offending behaviour and apparent good character, but on the other, it was this very reputation of Mr. Tracey's that led these families to trust him with their children; that allowed him to betray that trust and victimize those children.

[70] In terms of assessing the degree of moral blameworthiness, defence counsel also asks that I consider Mr. Tracey's out-of-character actions in the context of his mental health issues. In sentencing, moral blameworthiness can be mitigated by various factors, including *Gladue* factors, cognitive limitations, or mental health issues that may temper how the court views an offender's moral culpability. Specifically with respect to mental illness, the Alberta Court of Appeal noted the following in

R. v. Shevchenko, 2018 ABCA 31, at para. 28:

Put simply, an offender who has a significant mental illness is generally considered to have less moral blameworthiness than someone operating with an unimpaired view of the world. It is therefore imperative that a sentencing judge appreciate the extent and manifestation of the illness and link it to the degree of moral blameworthiness. A further important consideration is the role such illness may have played in the commission of the offence. Rarely do the offence and the mental illness stand entirely apart. The offence must be viewed in the context of the mental illness.

[71] In this case, Mr. Tracey is unable to explain the reasons for his actions. In the PSR, he "attributed his actions as symptoms of his own "depression" and "marital problems". Family members described behaviour, both before and after arrest, that would seem consistent with depression. However, the difficulty in this case is the lack of any comprehensive forensic psychiatric assessment to assist me in understanding the nature and extent of any mental illness and, more importantly, how it interrelates with the offending behaviour.

[72] The only information I have is the Risk Assessment completed by the Forensic Complex Care Team which indicates that Mr. Tracey, at least post-arrest, met the criteria for a provisional diagnosis of a Major Depressive Disorder. The Risk Assessment identifies Mr. Tracey as being at moderate risk to reoffend sexually, noting

major mental illness to be one of the factors elevating his risk for recidivism. However, the Risk Assessment does not speak to Mr. Tracey's mental state at the time the offences were committed, or how it might have influenced his actions, or impaired the ability of a man of his intellect to appreciate the nature and consequences of his actions. It is not open to me to speculate in the absence of expert evidence, thus it is difficult, if not impossible, to assess the mitigating impact of mental health on moral culpability in this case. Although I do accept his mental health was likely a contributing factor.

[73] I also must consider the potential for rehabilitation in this case. While Mr. Tracey expresses a desire to get counselling, notwithstanding the lengthy delay between his arrest and sentencing, he has demonstrated little to no motivation to pursue treatment. He was referred to Kate Hart for counselling by the Forensic Complex Care Team, but had attended only two sessions before his stroke, and has made no attempts to reengage.

[74] Avoidance appears to be a concern for Mr. Tracey. He has also neglected to maintain the medication regime or to pursue the physiotherapy his doctors have recommended as part of his stroke recovery. This avoidant behaviour is consistent with difficulties he appears to have in engaging in interpersonal relationships and in more introspective self analysis as described by family members and in the PSRs. This is likely related to his mental health issues, but the practical reality is that prospects for rehabilitation will largely depend on the extent to which Mr. Tracey is prepared to actually engage in programming. His motivation at this stage is questionable at best.

[75] In terms of aggravating factors, Mr. Tracey is not being sentenced for an isolated, impulsive act; rather he is before the Court in relation to a pattern of chronic behaviour involving numerous incidents and multiple victims, victims who were particularly vulnerable by virtue of their age, gender, and heritage.

[76] Next, the offences involved a significant breach of trust as each of the victims were under his care when he committed the offences.

[77] Lastly, I cannot lose sight of the devastating impact these offences have had and will have on the victims, their families, and the community. There is little the Court can do but impose sentence. It is beyond my power to change what has happened. I can only hope that the families and victims find some comfort in bringing these proceedings to a close. That each of the victims may come to understand that it is their courage in coming forward that stopped the abuse against, not just themselves, but against other potential victims; and that each of the adults may come to understand that they are not to blame for what happened; the blame is Mr. Tracey's alone.

Sentence

[78] Based on all of the information before me, I have determined that the appropriate global sentence in this case is one of five years. I am required to break down the five-year sentence in relation to specific counts. With respect to count 2 on Information 21-00339A, there will be a sentence of two years. With respect to Information 21-00381B, on count 2, there will be a sentence of two years to be served consecutively. With respect to count 4, there will be a sentence of one year to be served consecutively. In so concluding, I want to make it clear that the lower sentence

on count 4 is to reflect the principle of totality that I am required to consider and is not intended to suggest that I view count 4 as any less serious than the other two counts.

[79] In addition to the custodial sentence of five years, I must consider a number of ancillary orders, some mandatory, some discretionary.

[80] Firstly, as these are primary designated offences, I make the order that Mr. Tracey supply such samples of his blood as are necessary for DNA testing and banking.

[81] Secondly, pursuant to s. 109 of the *Criminal Code*, I make the mandatory order that Mr. Tracey be prohibited from possessing any firearms, ammunition, or explosive substances for a period of 10 years.

[82] Thirdly, I order that Mr. Tracey comply with the provisions of the *Sex Offender Information Registration Act*, S.C. 2004, c. 10, for a period of 20 years.

[83] Fourthly, the Victim Surcharge will be waived in light of Mr. Tracey's custodial status.

[84] Lastly, pursuant to s. 161, Mr. Tracey will be prohibited:

1. From attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre pursuant to s. 161(1)(a);

2. From seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years pursuant to s. 161(1)(b);
3. From being within two kilometres of the community of [redacted] or of any known residence of the four named victims pursuant to s. 161(1)(a.1); and
4. With respect to s. 161(1)(c), I am prepared to make the order prohibiting him from having any contact with a person under the age of 16, including communicating by any means, with the exception of his own daughter, in which case contact must be in the presence of his spouse.

[85] All prohibitions pursuant to s. 161 will be in place for life.

RUDDY T.C.J.