Citation: *R. v. Norton,* 2023 YKTC 44

Date: 20231106
Docket: 21-00312
Registry: Whitehorse

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

REX

v.

DAVID JEFFREY NORTON

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 — Counsel for the Crown
Kevin Drolet — Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS C.J.T.C. (Oral): David Norton was convicted after trial of having committed offences contrary to ss. 246.1(1) (x2) sexual assault. These are the offences that he is being sentenced on today.

[2] The offences occurred between October 1, 1983, and August 31, 1987. Mr. Norton was 37 to 41 years of age at the time he committed these offences.

[3] The two child victims of these offences will be referred to as V1 and V2 throughout this decision, (according to the order in which they testified). They were

siblings, and members of the Tr'ondëk Hwëch'in First Nation. V1 was approximately eight to 12 years of age, and V2 was approximately seven to 10 years of age at the time that the offences against them occurred.

[4] At the time of these offences, Mr. Norton was an ordained Anglican priest. As set out in the Admissions of Fact, he was assigned to the Yukon as the:

> 5. …Indian Ministries Coordinator for the Diocese of Yukon and Incumbent of St. Simon's Church in Whitehorse, [also known as the 'Old Log Church'] and St. Saviour's Church in Carcross.
>
> 6. Mr. Norton was hired to minister to "Indian people", to foster Christian fellowship amongst Anglicans of Indian ancestry and to foster Christian Education and leadership opportunities" within the context of the Anglican Church.

[5] Mr. Norton's congregation was largely comprised of Indigenous individuals.

[6] V1 testified that they first met Mr. Norton at the hospital when they were visiting their grandmother, who had cancer. Their grandmother was an attendee at the Church. Mr. Norton was at the hospital visiting her at the time. Mr. Norton was the officiate at their grandmother's funeral. V1 and V2 began to attend the Church with their mother following the funeral.

[7] Mr. Norton befriended V1 and V2, and a friendly, trusting relationship was developed with V1 and V2, and with their parents.

[8] V1 and V2 became more and more involved in church-related activities in Whitehorse and Carcross, serving as altar boys both at St. Simon's Church and St. Saviour's Church. They also engaged in many extracurricular activities with Mr. Norton, including visiting his property in the Lake Labarge area, camping, flying in a

private plane, and boating. These extracurricular activities included occasions of travel outside of the Yukon, both within Canada and abroad. Following Mr. Norton's permanent move from the Yukon in September 1987, V2 traveled on his own to Ontario in 1990 to visit Mr. Norton. This was the last contact V2 had with Mr. Norton until 2017.

[9] V1 and V2's parents were very busy trying to provide for the family. As a result, V1 and V2 spent a large portion of their spare time with Mr. Norton. V1 testified that he wanted to spend time with Mr. Norton more than he wanted to spend time with his family, to the point that at times he did not want to leave being with Mr. Norton in order to go home. V1 testified that Mr. Norton "was a trusted member of the family".

[10] V1 saw Mr. Norton as a guardian and role model that would look out for them. V1 said that Mr. Norton provided them opportunities that they were not able to have at home.

[11] During both church-related and extracurricular activities, V1 and V2 would end up sleeping in the same room, tent, and, at times, the same bed as Mr. Norton. They would be in their underwear only. V1 said that they, and other boys who would sleep over, would be "giddy" at who got to sleep beside Mr. Norton. V1 said that it was usually him next to Mr. Norton, and that they would be spooning back to front. V1 also testified, however, that no one actually wanted to sleep next to Mr. Norton. (In my opinion, this apparent contradiction is an example of the conflict created between wanting to feel special, but not wanting to "pay the price". The particular vulnerability of these children was what allowed Mr. Norton the opportunity to sexually abuse them).

[12] V2 testified that the boys would pretend that they did not want to sleep beside Mr. Norton, but that they actually wanted to. V2 said that it was considered to be special to sleep beside Mr. Norton.

[13] V1 said that from time to time he would wake up and Mr. Norton's hand would be touching his penis. He said that Mr. Norton might have put V1's hand on his (Mr. Norton's) penis. V1 believed that Mr. Norton would be masturbating, as the bed would be shaking, Mr. Norton would be moaning, and there would be a wet sticky stuff on the bed, and on V1's hand and his person. Mr. Norton would then get up and go to the washroom. V1 stated that he would elbow Mr. Norton in the stomach when his hand was in V1's pants.

[14] V1 stated that, in the morning he would say to Mr. Norton that he knew what had happened in the night. Mr. Norton would say that he missed his wife and his hands had wandered in the night, however V1 did not believe these explanations.

[15] V1 testified that he believed this happened to him three times between 1983 and 1987. He stated that he might have slept through a lot of it. He was unable to recall any sexual touching having occurred on those occasions he was outside of the Yukon with Mr. Norton. He testified that he never saw Mr. Norton touch anyone else sexually.

[16] V1 stated that he felt that the time in his life when he was abusing alcohol and drugs was in part related to Mr. Norton having withdrawn from his life, and the resultant loss of all the "great" things that had been part of his life. He said that things went downhill after Mr. Norton left. He said that he felt abandoned by Mr. Norton. V1 stated

that it took him a long time to sober up and become the productive member of society that he currently is.

[17] V1 testified that he never wanted any harm to come to Mr. Norton. He considered Mr. Norton to be his friend, and he said that he felt sad to see Mr. Norton like this. (Mr. Norton was present in court by video from the correctional facility he was currently serving a cumulative sentence of 13 years' custody for two prior consecutive sentences of four and nine years for sexual offending against children).

[18] V2 testified that a strong connection was made with Mr. Norton because of the amount of time he spent doing things with Mr. Norton. He said that Mr. Norton was "family", and a big part of his and V1's lives. He said that Mr. Norton had a way of making them feel special, like you were his favourite.

[19] He said that Mr. Norton's brief time married in 1984-85 impacted somewhat on the time he and V1 were able to spend with Mr. Norton, but that he always found time to spend with them. V2 said that both he and V1 attended the wedding ceremony in Ontario. Mr. Norton was married in Ontario on August 18, 1984. This marriage was annulled in Whitehorse on June 24, 1985.

[20] V2 said that other boys would also sleep over at Mr. Norton's residence when he was there. He said that everyone loved Mr. Norton, and that they all had a turn to sleep with him.

[21] V2 said that Mr. Norton gave them opportunities they would not otherwise have, and that at nighttime they made "sacrifices". He said that Mr. Norton would become

"touchy, feely", on occasions, and that Mr. Norton would masturbate or fondle himself and V2, as well as touching V2's penis or touching V2's body with his own penis. Mr. Norton would try to masturbate on V2 or on the sheets, and V2 would squirm or turn his body away in order to try to get away from Mr. Norton. On occasions Mr. Norton would ejaculate, with V2 having some of the ejaculate on him.

[22] V2 testified that the incidents of sexual touching occurred at least 10 to 12 times, including in Ontario, with probably at least 10 of the incidents occurring in the Yukon.

[23] V2 stated that even after Mr. Norton left the Yukon, he would send letters that V2 enjoyed reading, and that there were a few telephone conversations that were not negative.

[24] V2 testified to the shame and fear he felt, even as a child, as a result of the sexual touching that occurred. V2 stated that one of the reasons he came forward and provided a statement to the RCMP was that he wanted to free himself of all of this stuff that he had carried with him all of his life. He spoke of the trust issues that he had struggled with in his life that had impacted his relationships.

[25] V2 said that he harbours no ill feelings towards Mr. Norton. He said that he could still sit and talk to Mr. Norton about the good times that they had. He said that Mr. Norton was there for them and that he showed and taught them a lot of things. V2 said he had loved Mr. Norton, and he stated that he wished the best for Mr. Norton, but he did not want what had happened to him to happen to anyone else.

[26] Neither V1 or V2 had sought any monetary compensation for what had happened to them.

[27] Counsel for Mr. Norton did not cross-examine V1 or V2 on their testimony, or dispute anything that either of them testified to.

Position of Counsel

[28] Crown counsel submits that a sentence of eight to 10 years would be appropriate for the offence against V2, to be followed by a consecutive sentence of five to eight years for the offence against V1, thus a sentence within a range of 13 to 18 years. The sentences should be consecutive to the four-year and nine-year consecutive sentences Mr. Norton is currently serving. Considering and applying the principle of totality, a total sentence of an additional 10 years should be imposed.

[29] Mr. Norton was convicted of a s. 151 sexual interference offence on August 24, 2018, and received a custodial disposition of four years. He was subsequently convicted on March 22, 2019, of three counts of s. 156 indecent assault and one count of s. 246.1(1) sexual assault. Pursuant to a joint submission, he was sentenced to nine years on each count, concurrent to one another, and consecutive to the four-year sentence he was already serving.

[30] Crown is seeking a 20-year SOIRA order, and a mandatory DNA order.

[31] Defence counsel submits that a sentence of nine to 18 months' custody would be appropriate, considering Mr. Norton's age, health, and lengthy period of custody he is already serving and that remains to be served.

Victim Impact

[32] No victim impact statements were filed. However, it was clear to me in the testimony of the victims they suffered significant negative impacts resulting from Mr. Norton's breach of trust in sexually offending against them.

[33] At the conclusion of the trial evidence of the victims, both counsel requested that I grant the request of the victims to speak in private with Mr. Norton, who was attending the trial through video-link from his custodial setting. As all parties were in agreement, I granted this request. What the discussion was between them, I do not know, other than some of what Mr. Norton said when he exercised his right to address the Court at the conclusion of the sentencing hearing. I do not feel it necessary or appropriate to include these comments in my decision. This was a private meeting and should remain that way. I hope that this meeting provided something that both of the victims can utilize in their continuing healing path moving forward. I also hope that Mr. Norton was able to find something in this meeting that he can utilize in holding himself accountable for his actions, and that allows him to move forward on his own path.

[34] I was very impressed with both of the victims, both in respect of their demeanour and attitude in the trial. I found their testimony to be honest, direct, and, strikingly, forgiving of Mr. Norton. They demonstrated a level of maturity and growth that I wish to commend. I recognize that how these two victims have presented is in no way to be a reflection of how I would expect victims to present in any other case. The harm done to child victims of sexual offences is grievous, and there is no right way for a victim to respond, and forgiveness is not to be an expectation of the court or an offender. Where

it exists, it exists, and perhaps it is reflective of the particular victim's own healing journey. It is not something that I must take into account in crafting a just and fair sentence, as it would be error to presume the harm done to the victims was lesser, simply because of how they have chosen to deal with their victimization.

[35] Also, the moral culpability of Mr. Norton is not tempered by the fact that these two victims have been able to find and follow a path of healing and achieve stable and productive lives. As made very clear in ***R.*** v. ***Friesen***, 2020 SCC 9, courts should not underestimate the harm done to child victims of sexual offences. Neither is the physical intrusiveness of the offending behaviour an indicator of the harm that is done and that has been suffered by the victim. The harm done to child victims of sexual offences goes far beyond the physical harm suffered. The very impressionability of children as they grow and develop leaves them much more vulnerable to lasting and extensive harm from sexual abuse.

Case Law

Sexual Offending against Child Victims

[36] The approach to sentencing offenders for the commission of sexual crimes against children was addressed in ***Friesen***. The Court stated in para. 1 that:

> Children are the future of our country and our communities. They are also some of the most vulnerable members of our society. They deserve to enjoy a childhood free of sexual violence. Offenders who commit sexual violence against children deny thousands of Canadian children such a childhood every year. This case is about how to impose sentences that fully reflect and give effect to the profound [page440] wrongfulness and harmfulness of sexual offences against children.

[37] As stated in para. 5, in ***Friesen*** the Court was sending:

> … 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.

[38] In para. 42 the Court stated:

> Protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the *Criminal Code*. Our society is committed to protecting children and ensuring their rights and interests are respected (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 67). As Otis J.A. stated in *R. v. L. (J.-J.)* (1998), 126 C.C.C. (3d) 235 (Que. C.A.), [TRANSLATION] "the protection of children constitute[s] one of the essential and perennial values" of Canadian society (p. 250). Protecting children from becoming victims of sexual offences is thus vital in a free and democratic society (*R. v. Mills*, 2019 SCC 22, [2019] 2 S.C.R. 320, at para. 23).

[39] The Court noted that: “The prime interests that the legislative scheme of sexual offences against children protect are the personal autonomy, bodily integrity, sexual integrity, dignity, and equality of children,” (para. 51), further stating in para. 56 that:

> This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, as this Court held in *R. v. McCraw*, [1991] 3 S.C.R. 72, "may often be more pervasive and permanent in its effect than any physical harm" (p. 81).

[40] The Court noted that sexual offending against children causes:

- Relational harm by damaging children's relationships with their families and communities; and
- Harm to families, communities and society;

[41] The Court further comments on the:

- Wrongfulness of exploiting children's weaker position in society;
- Disproportionate impact on girls and links to violence against women; and
- Disproportionate impact on Indigenous people and other vulnerable groups.

(paras. 60-73)

[42] The Court then stated in para. 74 that:

> It follows from this discussion that sentences must recognize and reflect both the harm that sexual offences against children cause and the wrongfulness of sexual violence. In particular, taking the harmfulness of these offences into account ensures that the sentence fully reflects the "life-altering consequences" that can and often do flow from the sexual violence (*Woodward*, at para. 76; see also, *Stuckless (2019)*, at para. 56, per Huscroft J.A., and paras. 90 and 135, per Pepall J.A.). Courts should also weigh these harms in a manner that reflects society's deepening and evolving understanding of their severity (*Stuckless (2019)*, at para. 112, per Pepall J.A.; *Goldfinch*, at para. 37).

[43] Considerations for the sentencing judge are noted in ***Friesen*** to be as follows:

(a) Harmfulness and wrongfulness and the proportionality assessment;
(b) Gravity of the offence;
    i. Inherent wrongfulness;

ii. Potential harm;

iii. Actual harm; and

iv. Degree of responsibility of the offender;

[44] The Court identified the following significant factors to be considered in determining a fit sentence:

(a) Likelihood to reoffend;

(b) Abuse of a position of trust or authority;

(c) Duration and frequency;

(d) Age of the victim; and

(e) Degree of physical interference.

[45] While the Court recognized that the degree of physical interference of the sexual offending is a relevant consideration (paras. 138 and 139), the Court cautioned sentencing judges against:

> …downgrading the wrongfulness of the offence or the harm to the victim where the sexually violent conduct does not involve penetration, fellatio, or cunnilingus, but instead touching or masturbation. There is no basis to assume, as some courts appear to have done, that sexual touching without penetration can be [TRANSLATION] "relatively benign" (see *R. v. Caron Barrette*, 2018 QCCA 516, 46 C.R. (7th) 400, at paras. 93-94). (para. 144)...

[46] And goes on to state in paras. 144 and 145:

> …Some decisions also appear to justify a lower sentence by labeling the conduct as merely sexual touching without any analysis of the harm to the victim (see *Caron Barrette*, at paras. 93-94; *Hood*, at para. 150; *R. v. Iron*, 2005 SKCA 84, 269 Sask.R. 51, at para. 12). Implicit in these decisions is the belief that conduct that is unfortunately referred to as "fondling" or [TRANSLATION] "caressing" is inherently less harmful than other forms of sexual violence (see *Hood*, at para. 150; *Caron Barrette*, at para. 93). This is a myth that must be rejected (Benedet, at pp. 299 and 314; Wright, at p. 57). Simply stating that the offence involved sexual

> touching rather than penetration does not provide any meaningful insight into the harm that the child suffered from the sexual violence.
>
> …we would emphasize that courts must recognize the wrongfulness of sexual violence even in cases where the degree of physical interference is less pronounced. Of course, **increases in the degree of physical interference increase the wrongfulness of the sexual violence**. However, sexual violence against children remains inherently wrongful regardless of the degree of physical interference. Specifically, courts must recognize the violence and exploitation in any physical interference of a sexual nature with a child, regardless of whether penetration was involved (see Wright, at p. 150). [Emphasis mine]

*Application of **Friesen** to Historical Offences*

[47] The application of ***Friesen*** to historical cases of sexual offending against children was recently addressed in ***R.*** v. ***Gaglardi***, 2023 BCSC 96.

[48] The 78-year-old offender was sentenced, after being found guilty at trial, to six and one-half years' custody for sexual offences against 11 male victims that were committed over a span of 40 years.

[49] The Court noted at para. 1 that:

> …In each instance, Mr. Gaglardi took advantage of a position of trust, exploited the vulnerability of the victim, and touched the victim in a sexual manner. Many of the victims suffered substantial and prolonged impacts as a result of Mr. Gaglardi's offending behaviour.

[50] The offences that occurred between 1971 and 1981 (five victims) were while Mr. Gaglardi was associated with a church as an ordained counsellor, the director of the church's sound and productions department, a teacher and school guidance counsellor at the church-related academy, and an organizer and supervisor at the church's summer camp. The victims were all between 10 and 17 years of age. Mr. Gaglardi was between 25 and 35 years of age.

[51] The offences that occurred between 1993 and 2015 (six victims), again while Mr. Gaglardi was associated with a church, and while he provided counselling, mentorship, and a holistic health practice. He was noted to be less formally involved with this church, but nonetheless had a significant presence in the church. The male victims were between 15 and 30 years old.

[52] Mr. Gaglardi did not, including after the findings of guilt were made, accept any responsibility for the offences, and denied committing them.

[53] The Court referenced the guidance provided in ***Friesen*** when sentencing offenders for sexual offences against children, however, the Court expressed the need for a cautious approach to be taken when sentencing offenders for offences that occurred prior to the legislative amendments relied upon in ***Friesen***, in part, as a basis for increased sentences.

[54] Riley J. stated in para. 73 that:

> The message I take from the case law that I have just reviewed can be stated in two propositions. First, sentencing judges must always take into account what the Supreme Court of Canada said in *Friesen* about the seriousness, harmfulness, and moral blameworthiness of sexual offences against children. Second, in dealing with offences committed before the *Criminal Code* amendments mandating increased sentences for such offences, sentencing judges cannot apply the more specific guidance in *Friesen* regarding sentencing ranges, because that guidance rests at least in part on amendments that were not in force at the time of the offences.

[55] The Court went on to provide a summary of points to be taken from ***Friesen***, and applied to the case before him, as follows:

74 With those parameters in mind, dealing specifically with the seriousness and moral blameworthiness of sexual offences against children, the points that I would take from *Friesen* and apply in the case at bar can be summarized as follows:

(a) It is essential for sentencing judges to have a proper understanding of the wrongfulness of sexual offences against children, and the harm that such offences causes to victims: *Friesen* at para. 50.

(b) The interests that the law is designed to protect include personal autonomy, bodily integrity, sexual integrity, dignity, and equality. In this regard, sentencing courts need to be aware of not merely the physical harm that sexual offences cause to the victim, but also the emotional and psychological harm. Thus, the likely effects of sexual offences include "shame, embarrassment, unresolved anger, reduced ability to trust others", and fearfulness: *Friesen* at para. 55-57.

(c) These forms of harm are particularly pronounced in children. Even a single instance of sexual violence can profoundly alter a child's life: *Friesen* at para. 58.

(d) Sexual violence against children also causes harm in the form of damaged relationships with families and caregivers. Sexual violence can tear families apart and render them dysfunctional. Parents or siblings [may] have a misguided sense of blame toward the child victim. And child victims may lose confidence in the ability of family members to protect them: *Friesen* at para. 60.

(e) Sexual violence against children can have ripple effects on other relationships. Among other things, child victims of sexual violence may experience a loss of trust amongst people they know or the community at large: *Friesen* at para. 61.

(f) The protection of children from harm is one of the most fundamental values in our society. Sexual violence against children is wrong and especially morally blameworthy because it can turn this societal value on its head: *Friesen* at para. 65.

(g) Perpetrators of sexual violence against children commit their offences in secrecy, often using coercion to discourage child victims from reporting the crime.

> Offenders also rely on society's naïve reluctance to recognize or acknowledge that such crimes are committed in their communities by individuals they know: *Friesen* at para. 67.
>
> (h) It is not enough for courts to simply acknowledge the seriousness of sexual offences against children. The sentences imposed must actually reflect the gravity of the crime and the harm to the victims: *Friesen* at para. 76.
>
> (i) Physical contact of a sexual nature with a child always constitutes a wrongful act with both physical and psychological components, even when the conduct is not accompanied by additional physical violence and does not result in physical or psychological injury: *Friesen* at para. 77. Courts must reject the belief that there is no serious harm to children in the absence of additional physical violence: *Friesen* at para. 82.
>
> (j) The harms caused by sexual violence against children include harm that manifests itself during childhood, and long term harm that only becomes evident during adulthood: *Friesen* at para. 80.
>
> (k) Applying force of a sexual nature to children is always morally blameworthy. Such blameworthiness includes harm that was actually intended, and harm to which the offender is reckless or wilfully blind: *Friesen* at para. 88.
>
> (l) The moral blameworthiness of sexual violence also includes the recognition of the offender's wrongful sexual exploitation and objectification of the victim. The degree of blameworthiness is higher when the victim is a child, because children are so vulnerable: *Friesen* at para. 89-90.
>
> (m) Despite all of this, the sentencing court should not overlook factors that tend to diminish the offender's blameworthiness, where they are present: *Friesen* at para. 91.

75 The Court went on to discuss a number of factors that may be considered in determining a fit sentence for sexual offences against children, namely (a) likelihood of re-offence, (b) abuse of a position of trust or authority, (c) duration and frequency of the offending conduct, (d) age of the victim, and (e) degree of physical interference.

> 76 With regard to point (e), the degree of physical interference, the Court discouraged sentencing judges from downgrading the seriousness of the offence based principally on the notion that the particular acts in issue may not have been physically intrusive: *Friesen* at para. 144. Earlier in the judgment the Court discouraged sentencing judges from focusing on the presence or extent of physical injury, which could detract from a proper consideration of the psychological and emotional impacts of the crime on the victim: *Friesen* at para. 56, 77.

[56] As stated in para. 146 of ***Friesen*** on this point:

> ….it is an error to understand the degree of physical interference factor in terms of a type of hierarchy of physical acts. The type of physical act can be a relevant factor to determine the degree of physical interference. However, courts have at times spoken of the degree of physical interference as a type of ladder of physical acts with touching and masturbation at the least wrongful end of the scale, fellatio and cunnilingus in the mid-range, and penile penetration at the most wrongful end of the scale (see *R. v. R.W.V.*, 2012 BCCA 290, 323 B.C.A.C. 285, at paras. 19 and 33). This is an error - there is no type of hierarchy of physical acts for the purposes of determining the degree of physical interference. As the Ontario Court of Appeal recognized in *Stuckless (2019)*, physical acts such as digital penetration and fellatio can be just as serious a violation of the victim's bodily integrity as penile penetration (paras. 68-69 and 124-25). Similarly, it is an error to assume that an assault that involves touching is inherently less physically intrusive than an assault that involves fellatio, cunnilingus, or penetration. For instance, depending on the circumstances of the case, touching that is both extensive and intrusive can be equally or even more physically intrusive than an act of fellatio, cunnilingus, or penetration.

[57] While the courts have recognized that the degree of physical interference with the child victim is a factor to be considered in determining a fit sentence, it is not a factor that should be used to assess the degree of physical, emotional, or psychological harm that the victim has suffered, apart, obviously from clearly apparent physical injuries and physical recovery from those injuries. If anything, the degree of physical interference is a factor that primarily goes to assessing the moral culpability of the offender (para. 145 ***Friesen***).

[58] Starting from the baseline that any sexual offence against a child is extremely serious and heinous, and merits a strong denunciatory and deterrent sentence, the degree of physical interference is a factor that must be considered in determining the appropriate sentence, but it is one factor only and not in and of itself to considered as necessarily indicative of the harm suffered by the victim. The moral culpability of an offender is to be decided on a case-by-case basis, as is the harm caused to the victim, starting, again of course, from a presumption that serious harm has been caused.

Consecutive or Concurrent Sentences and the Totality Principle

[59] In ***R.*** v. ***Nystrom***, 2023 BCCA 232, the Court stated:

> 35 Consecutive sentences for multiple offences may be imposed where the offences do not arise from the same event or series of events: *Criminal Code*, s. 718.3(4)(b)(i). Conversely, concurrent sentences may be imposed where "the acts constituting the offence were part of a linked series of acts within a single endeavour": *R. v. Li*, 2009 BCCA 85 at para. 42 citing *R. v. G.P.W.* (1998), 106 B.C.A.C. 239 at para. 35. A decision to impose consecutive or concurrent sentences is to be treated with the same deference owed to judges concerning the length of the sentences: *R. v. McDonnell*, [1997] 1 S.C.R. 948 at para. 46.
>
> 36 The totality principle, reflected in s. 718.2(c) of the *Criminal Code*, requires a judge who imposes consecutive sentences to ensure that the total sentence is not unduly long or harsh such that it exceeds the offender's overall culpability: *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at para. 42; *Friesen* at para. 157. The usual approach is to first determine the appropriate sentence for each offence and decide whether each sentence should be consecutive or concurrent. Where consecutive sentences are imposed, the judge must decide whether the aggregate sentences offend the totality principle: *Li* at para. 28; *R. v. Punko*, 2010 BCCA 365 at para. 93. If they do, the length of the individual sentences may be reduced or some sentences may be served concurrently: *R. v. Somers*, 2021 BCCA 205 at para. 47. If the latter approach is taken, the judge must nevertheless consider whether the global sentence will properly reflect the offender's culpability. As this Court stated in *Somers*:

> [48] ... In many cases when an offender has committed multiple serious offences that, but for the totality principle, would otherwise result in consecutive sentences, the offender's moral culpability is greater than had the offender committed the same offences on one occasion. The judge applying the totality principle needs to consider the greater moral blameworthiness arising from the multiple offences.

[See also ***R.*** v. ***J.J.P.,*** 2018 YKSC 30, at para. 213; ***R.*** v. ***J.(R.)***, 2017 MBCA 13, at para. 13]

[60] Many of the authorities provided by Crown counsel are in support of his submission that the sentences to be imposed in this case should be served consecutively to each other and to the sentences Mr. Norton is already serving. Counsel also references s. 718.3(7) of the *Code*.

[61] As stated by Veale C.J. stated in ***J.J.P.*** in para. 214:

> The sentences imposed in this case should generally run consecutive to one another. J.J.P.'s offences are distinct, involving different victims, and although they reflect a pattern of behaviour, each should be recognized and specifically addressed. …

[62] In the end, what is important is that a just and appropriate sentence be imposed, taking into account the need to recognize in the sentencing process, the separate victims and harm caused to each of them, and taking into account the need to impose a sentence that does not offend the principle of totality.

[63] In ***R.*** v. ***J.B.P.***, 2023 ONCJ 460, the Court stated in paras. 27 and 28:

> In *R. v. Solomon*, 2022 ONCA 706, the Court cited *Friesen* with approval, tacitly accepting that the principles from *Friesen* apply to historical offences in the course of concluding that the sentence imposed in that case (five years jail for sexual exploitation, sexual assault and threats committed from 1996-2001) was appropriate.

> The totality principle must take into account J.B.P.'s health circumstances and life expectancy. I am mindful of the direction of appellate courts that the sentence I impose should not crush all hope. I am also mindful that if incarcerated, J.B.P. will have access to s. 121 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, which can be used to expedite parole if terminal illness or serious mental or physical health damage will result from continued confinement.

[64] In ***R.*** c. ***Sendel***, 2023 QCCQ 6210, Mascia J.Q.C. stated in paras. 114 and 115:

> In essence, the principle of totality is closely connected to the principle of proportionality as it ensures that the global sentence meted out for consecutive offences is proportionate to the gravity of the offence and the degree of responsibility of the offender. In *R* v M. (C.A., [1996] 1 SCR 500: Justice Lamer explained the principle as follows:
>
> > [42] In the context of consecutive sentences, this general principle of proportionality expresses itself through the more particular form of the “totality principle”. The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender.
>
> In practice, a court fixes appropriate sentences for each offence, then considers whether or not adjustments have to be made in order to achieve a total sentence that does not exceed the overall culpability of the offender. The totality principle ensures that the offender is treated fairly and avoids the imposition of a crushing sentence that would deprive him/her of any hope of rehabilitation and a return to normal life as a useful citizen.

[65] With respect to how the sentences to be imposed for these offences are to take into account the remaining time in custody Mr. Norton has on his four and nine-year consecutive sentences, which end in 2031, noting that I have been advised that Mr. Norton is eligible for parole in approximately four years, in ***R.*** v. ***Lambert***, 2023 NSSC 264, in paras. 51 to 58 the Court stated:

51 In Mr. Lambert's case the principle of totality must be addressed. He has been sentenced to 16 years for drug and robbery offences unrelated to this matter. He has 10 years left on that sentence.

52 Totality is part of the principle of proportionality and serves to maintain that principle. When consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. That is codified in s. 718.2(c) of the *Criminal Code*. Practically, if an offender is convicted of multiple break and enter offences each is sentenced as a separate offence. But the total of those sentences may exceed what would be just and appropriate in the circumstances. The sentences together would exceed the gravity of the offences and the overall culpability of the offender. The sentence must still relate to and reflect sentencing goals, including denunciation, deterrence, rehabilitation and the need to separate offenders from society. But where the ultimate effect of the sentence is to deprive the person of any hope of release or rehabilitation there is no value in the sentence itself.

53 Canadian courts do not sentence people to periods of incarceration that are greater than their potential lifespans to "make a point".

54 The principle does not only apply in the circumstances in which a judge is imposing a sentence for a series of offences. The Ontario Court of Appeal in *R. v. Johnson*, 2012 ONCA 339, described at least two circumstances where the principle of totality in the context of consecutive sentences may arise.

> The first is where a single judge must deal with a series of offences, some of which require the imposition of consecutive sentences having regard to the criteria for such sentences. A second - which is the case here - concerns a situation where a sentencing judge must impose a fit sentence on an offender convicted of one of more offences where that offender is at the same time serving the remainder of a sentence for a previous conviction or convictions. (para. 19)

55 The Court noted that the *Criminal Code* did not draw a distinction between those two circumstances. The Court noted that the potential for unduly harsh sentences to frustrate the goals of the process exists where the offender is incarcerated for an excessive period of time because of one sentence imposed by one judge or because of the combined effect of a new sentence imposed by a subsequent judge and the remainder of an existing sentence.

> At the same time, there is an additional level of concern that comes into play where a subsequent sentence is imposed

> on top of the remainder of an existing one, and, as a result, the totality principle has a somewhat tempered effect in such circumstances, in my view. (*Johnson*, para. 22)

56 A person should not be seen as reaping the benefits from his "previous serious criminal conduct". The principle of totality has a substantially reduced effect on a sentence where part of the total is based upon the remaining part of a sentence that is being served. That does not mean that it has "only a minimal application" in those situations. It will have a substantially reduced effect because there are other considerations regarding the need to protect the integrity of the sentencing process. A sentencing judge must consider the effect of the sentence being served but must also be conscious of the concern that an offender is not seen as getting a benefit that brings the sentence imposed outside the range of what would be just and appropriate.

57 In *R. v. Campbell*, 2022 NSCA 29, the Nova Scotia Court of Appeal set out three factors to be considered when applying the principle of totality. The principle does not entitle an offender to a reduction in sentence, but a reduction of the aggregate sentence arises if the total is crushing or exceeds the overall culpability of the offender. The principle applies whether consecutive sentences are imposed at the same time or at different sentencing hearings. And where the sentences are imposed at different hearings the amount left to be served on the previous sentence must be considered.

58 So, in this case, what is considered is not the full 16-year sentence that Mr. Lambert received but the 10 years that he has left to serve on it.

Statutory Regime

[66] Crown counsel has filed the following excerpts from the *Criminal Code*:

> **718.01 Objectives – Offences against children**
>
> When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.
>
> …
>
> **718.04 Objectives – Offence against vulnerable person**

When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances – including because the person is Aboriginal and female – the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

…

718.2 Other sentencing principles [in part]

A court that imposes a sentence shall also take into consideration the following principles:

(a) A sentence should be increased or reduced to account for any relevant or aggravating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

…

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

Section 718.3(7) Cumulative punishments — sexual offences against children

…

(7) When a court sentences an accused at the same time for more than one sexual offence committed against a child, the court shall direct

(a) that a sentence of imprisonment it imposes for an offence under section 163.1 be served consecutively to a sentence of imprisonment it imposes for a sexual offence under another section of this Act committed against a child; and

(b) that a sentence of imprisonment it imposes for a sexual offence committed against a child, other than an offence

> under section 163.1, be served consecutively to a sentence of imprisonment it imposes for a sexual offence committed against another child other than an offence under section 163.1.

[67] However, none of these provisions of the *Code* were in effect at the time that Mr. Norton committed these offences.

[68] As such, it would not be appropriate to simply apply and consider these as being applicable to this sentencing proceeding. The application of the statutory principles of sentencing that were in place at the time that Mr. Norton committed these offences are to be applied, as established by the common law, not those that have since been legislated. To the extent, however, that a legislative amendment is simply a codification of the common law that existed at the time, the result may effectively be the same.

[69] In ***R.*** v***. W.G.L.***, 2020 NSSC 323, Rosinski J. addressed this question as follows in paras. 4 and 9 to 11:

> 4 Offenders are entitled "if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment" by virtue of section 11(i) of the *Canadian Charter of Rights and Freedoms*.
>
> …
>
> 9 In imposing sentences judges are guided by the relevant statutory provisions, and the binding and persuasive jurisprudence, which they then apply to the facts of the case. In this case, a threshold issue presents itself. WGL was convicted in 2020 for offences he committed between 1996 and 2000. The statutory principles of sentencing contained in the *Criminal Code* have changed during that time interval.
>
> 10 Is WGL to be sentenced according to the statutory principles of sentencing at the time of his crimes or at the time of his sentencing? Whichever set of principles of sentencing are found to be applicable, will

> also in large measure determine which precedents in the jurisprudence should be given the most weight, since they will have been analysed through the lens of the statutory principles of sentencing that also apply in this case.
>
> 11 A further complicating factor arises as a result of the reasons of the Supreme Court of Canada in *R v Friesen*, 2020 SCC 9. While it does enunciate general principles of application to adults who are sentenced for sexual offences against "children" (see footnote 1 in the Court's reasons at para. 1), it also specifically addresses to whether "sentencing ranges for sexual offences against children [are] still consistent with Parliamentary and judicial recognition of the severity of these crimes" (para. 23).

[70] Rosinski J. reviewed ***Friesen***, and held that some, but not all, of the reasoning in ***Friesen*** applied (see para. 14), and further stated:

> 18 I conclude that WGL is entitled to be sentenced according to the sentencing provisions (statutory principles of sentencing; maximum sentences available) that existed during the time of the commission of the offences -- and the statutory-revisions rationale for increasing sentences for sexual offences against children per *Friesen* is not applicable in WGL's circumstances (see *Friesen* para 169).
>
> 19 On the other hand, in *Friesen*, the court also stated:
>
> > "A second reason why upward departure from precedents may be required is that courts' understanding of the gravity and harmfulness of sexual offences against children has deepened, as we have sought to explain above." (para. 11)
>
> 20 The latter comment is applicable to the sentencing of WGL, to the extent that this court can conclude that earlier precedents did not adequately reflect or recognize both the gravity and harmfulness of sexual offences to children.

[71] The same reasoning was applied in ***R.*** v. ***Campbell***, 2021 BCSC 323, where Brundrett J. stated in paras. 26 and 27:

> 26 In 2005, ss. 718.01 and 718.2(a)(ii.1) came into force. Those provisions explicitly deem offences involving abuse of minors as an aggravating circumstance and require courts to give primary consideration on sentencing to the objectives of denunciation and deterrence. However,

> because those sections were not in force when the offence occurred, I would not rely on them.
>
> 27 Nevertheless, offending against a child has always been a common law aggravating factor, often calling for a denunciatory and deterrent sentence: *R. v. D.G.*, 2014 BCCA 84 at paras. 16-17 [*D.G.*].
>
> [See also ***Gaglardi***, para. 73, referenced above]

[72] See also ***R.*** v. ***Moazami***, 2015 BCSC 2055, at para. 13 where, in considering s. 718.3 of the *Code*, Bruce J. states:

> The Crown argues that the newly enacted s. 718.3(7) of the *Code*, which mandates consecutive sentences whenever an offender commits a sexual offence against a child, codifies existing common law principles. In my view, however, with regard to the offences committed by Mr. Moazami, the Court must still examine the circumstances of each instance to determine if the sentence imposed should be served concurrently or consecutively. The Court cannot automatically decide that sexual offences against children attract consecutive sentences for offences committed prior to the enactment of this provision.

[73] I appreciate that not all courts necessarily agree with this position (***R.*** v. ***Berndt***, 2022 ABQB 418, at paras. 33 to 37, a decision I understand was so far only referenced by one decision, ***R.*** v. ***W.C.T.***, 2023 ABCJ 164, although the extent to which the reasoning in ***W.G.L.*** was rejected in ***Berndt*** is not necessarily clear). I agree with and follow the reasoning in ***W.G.L.***, ***Campbell***, ***Moazami***, and ***Gaglardi***.

[74] In his Memorandum of Argument Application of *Charter* Section 11(i), Crown counsel makes reference to para. 61 of ***R.*** v. ***Stuckless***, 2019 ONCA 504, that states:

> …it was incumbent on the sentencing judge to impose a sentence with regard to the jurisprudence and understanding of sexual offending as it exists today. Previous sentencing decisions are historical portraits, not straitjackets: *Lacasse*, at para. 57. The sentencing judge appears to have overlooked the significant evolution in sentencing jurisprudence that has taken place since *Stuckless 1998*.:

[75] This reasoning was adopted in the recent case of ***R.*** v. ***R.O.***, 2023 BCCA 65, where the Court stated in para. 49:

> I agree that the citing of *Stuckless* in *Friesen* can be seen as the Court's adoption of the principle that in historical cases, proportionality demands recognizing the increased gravity with which today's society understands sexual offences against children. In light of this, it is appropriate to conduct a parity analysis with regard to contemporary case law, bearing in mind not to exceed the maximum sentence in force at the time of the offence. Prior precedents from previous eras that do not reflect this deepened understanding should not be determinative or seen as "imposing a cap on sentences": *Friesen* at para. 110.

[76] I agree that historical sentencing precedents for sexual offences against children are today not to be boundaries for the present sentencing of a sexual offender for offences against children that happened at a time that those sentencing decisions were pronounced. They are relevant from a historical precedent, and are informative, but it is clear that ***Friesen*** requires us to now impose an appropriate sentence that takes into account our greater understanding of the harm child victims of sexual abuse suffer.

[77] A sentence today for a sexual offence against a child will, in all likelihood, be longer than the sentence for the same offence, in similar circumstances, would have been pre-***Friesen***, not withstanding the limitations ***Gaglardi*** and the other cases put on the application of subsequent statutorily aggravating factors, with respect to historical sexual offences against children.

[78] In my opinion, ***W.G.L.***, ***Campbell***, ***Moazami***, and ***Gaglardi*** do not state otherwise. Counsel for Mr. Norton has conceded this point as well.

[79] It is important, however, not to assume that all sentencing judges and decisions in the past failed to recognize the harm done to child victims. Cases such as ***R.*** v. ***D.D.*** (2002), 58 O.R. (3d) 788 (C.A.), and ***R.*** v. ***Horne*** (1987), N.W.T.R. 168 (NWT. SC.), (referenced in more detail later in this decision), are examples of cases where the sentencing judge emphasized the harm suffered by child victims of sexual abuse. While ***Friesen*** may be more comprehensive and have the benefit of expanding knowledge in this area of harm, it would be unfair to presume that all judges pre-***Friesen*** did not take into account a reasonable understanding of the harm to these victims, even by today's standards.

[80] I also recognize what was stated in the case of ***R.*** v. ***Poulin***, 2019 SCC 47. In para. 97 the majority of the Court, in holding that a binary approach to the application of s. 11(i) is preferable to a global approach, stated:

> ...In my view, any perceived unfairness or arbitrariness flowing from a binary approach to s. 11(*i*) is outweighed by the unfairness or arbitrariness that would result from according greater constitutional protections to those offenders who are sentenced long after their offences, compared to those offenders who are promptly brought to justice. In simpler terms, a global approach to s. 11(*i*) would disproportionately benefit those who are sentenced years, or even decades, after their offences, such as Mr. Poulin himself. It bears repeating that Mr. Poulin went over three decades before being held to account for his sexual offences. As this Court has observed, sexual offences like Mr. Poulin's often go long unreported. Survivors of sexual trauma commonly delay in disclosing abuse for reasons such as "embarrassment, fear, guilt, or a lack of understanding and knowledge" (*R. v. D.D.*, 2000 SCC 43, [2000] 2 S.C.R. 275, at para. 65). There should be no additional gain to an offender under s. 11(*i*) when a victim is traumatized to the point of requiring significant time to overcome any reluctance to report the offence. Offenders whose crimes go long unreported should not have access to a greater number of possible punishments under s. 11(*i*) by virtue of their own offending conduct.

[81] The victims of Mr. Norton's sexual abuse in this case spent decades dealing with the trauma of what happened to them. They had to take the first step towards holding Mr. Norton accountable for the crimes he committed against them. Mr. Norton did not choose to take the first step. He could have at any time, including, in particular, when he was no longer able to maintain the public facade of good character that he had sustained for most of his life that fell with the 2016 charges resulting in the 2018 conviction. This is, of course, not to be held against him as an aggravating factor. Any mitigation that could have been gained, however, was not. I am sure that at least since the charges that resulted in the 2018 conviction, Mr. Norton was likely living under a shadow of the possibility of charges for the other offences he knew he had committed, but that had not been publicly revealed. This was a shadow of his own making however and, in my opinion, cannot be compared to the shadow he forced these two victims to live under. He had a choice; they did not.

Aggravating Factor of Breach of Trust and Harm to Victims; Prior Sentencing Precedents

[82] I turn now to a consideration of these factors, as seen in case law.

[83] In ***R.*** v. ***Lai*** (1988), 69 Nfld. & P.E.I.R. 297 (Nfld. C.A.), case involving a sentence appeal on sexual assault and attempted murder convictions, O'Neill J.A. stated:

> This Court has stated on several occasions that breach of trust is a major factor to be considered in the imposition of sentences. In R. v. Kelly, (unreported) filed in this court on January 4, 1988, although the reference there was to clergy and teachers, it is stated at pp. 5 and 6:
>
> > Where one from either of these groups commits a sexual assault upon a child entrusted to him, he offends against the child, the child's parents and all society. The child is

> disillusioned and may become apprehensive of all teachers, clergy and others in authority. Parents are concerned as to whether their children can be safely entrusted to such persons, all of whom are so important to the development of a child.
>
> Clergymen and teachers must act with the utmost good faith. When they do not, they must pay the price - not only to be deterred themselves, but so that others in positions of trust will also be deterred.

[84] In ***R.*** v. ***Stewart*** (1988), 3 Y.R. 107 (Y. SC.), Maddison J. was sentencing a "highly respected elementary school teacher" who had pled guilty following a preliminary inquiry to two counts of indecent assaults against two boys. The indecent assaults took place between 1969 and 1974.

[85] Maddison J. stated:

> …He used his position of trust as a teacher to entice his two victims into acts of masturbation, and in the case of Victim Two, into mutual acts of fellatio and several attempted acts of buggery. Apart from the attempted acts of anal intercourse which ceased at the point of hurt, there was no violence involved.
>
> The accused contrived with both victims to have each of them partake in various extracurricular activit[i]es in which he also partook as leader, teacher or coach. He then made the arrangements such that it put he and his victims alone together, thus affording him the opportunity to make his sexual advances to each individual victim.

[86] The victims were in Grade 6 and 7 when the offences against them started. There were seven to 10 incidents with respect to Victim One, all of which occurred while in Grade 6, although the offender attempted further encounters when the victim was in grade 7. The incidents involving Victim Two occurred frequently over a period of several years.

[87] Maddison J. noting that the harm to the victims was serious, continuing into adulthood and relationships, stated, “Thanks to the enlightened approach of the victims, the impact on each has been minimized”.

[88] Maddison stated:

> …There is a wide variation ranging from R. v. R.J.P., (1987), 2 Y.R. 221, in which the Yukon Court of Appeal upheld the imposition of a fine and probation to a father who had sexually assaulted his step-daughter, age ten, twice a week over a period of nine months; to R. v. Henein, (1980), 53 C.C.C. (2d) 257, in which the Ontario Court of Appeal imposed a six-month sentence and three years' probation for acts of fellatio on five boys; to R. v. Robertson,(1979), 46 C.C.C. (2d) 573, where the Ontario Court of Appeal reduced an eight-month sentence and probation for gross indecency and indecent assault against three young boys by a scout master to time spent in custody and probation…
>
> In R. v. Pilgrim, (1981), 64 C.C.C. (2d) 523, the Newfoundland Court of Appeal would have imposed a suspended sentence and probation for an assault involving some violence and fondling of a 16-year-old boy by a teacher, the Court reducing the sentence to time spent in custody and probation.
>
> In R. v. Agate, (1980), 2 Y.R. 153, in 1980, the Yukon Court of Appeal imposed a sentence of one year imprisonment against a cook at a cadet camp who had indecently assaulted four boys.
>
> More recently in R. v. Bennett, [1986] B.C.J. No. 645, B.C.C.A., July 17, 1986, the B.C. Court of Appeal imposed a sentence of four years against a man who was a member of an organization which helped boys without fathers who had indecently assaulted and sexually assaulted six boys from ages nine to twelve years on a total of twelve occasions. Lambert, J. would have left in place the two-year sentence followed by three years' probation imposed by Wong, C.C.J.
>
> In R. v. Horne, [1987] N.W.T.R. 168, in the Northwest Territories, Marshall, J. imposed a sentence of six years on a teacher who had committed ten acts of fellatio, sexual assault, and indecent assault involving seven of his students. That particular accused was diagnosed a paedophile.
>
> In R. v. Noyes, (1986), 6 B.C.L.R. (2d) 306, Paris, J. imposed an intermediate period of detention for the accused paedophilic teacher's 19

> depredations against 19 children ranging in age from six to 15 years over many years. The British Columbia Court of Appeal upheld that sentence.
>
> In R. v. McMullen, [1987] B.C.J. No. 111, B.C.C.A., January 21, 1987, the British Columbia Court of Appeal, in January, 1987, concluded that McMullen was not a paedophile, that he had controlled his sexual appetite for the 10 years preceding trial and imposed a sentence of 12 months' imprisonment. The Court said in McMullen that absent the long period before charges were laid, the appropriate sentence for four acts of gross indecency with four young girls, two of which were daughters, the other two foster children, would have been two years less a day.
>
> This Court in Roach, [1987] Y.J. No. 58, S.C.Y.T., December 21, 1987, dated December 8th, 1987, sentenced the accused to two years' imprisonment followed by three years' probation for eight indecent and sexual assaults against six boys. The assaults occurred over 11 years, right up to the time of apprehension. Roach was a paedophile. Like the present accused, Roach abused a position of trust.

[89] Maddison J. imposed a sentence of 18 months' custody on each charge, concurrent, and three years probation.

[90] In ***Horne***, (also cited as ***R.*** v. ***H.(E.)***, in fact and different to the summary provided by Maddison J., there were actually 10 counts (246.1 x6, 157 x2, 156 x2) involving eight boys ages 10 to 14. There were 24 definite incidents of sexual abuse, committed by a teacher of high repute. The offences involved mutual fondling, masturbation, and fellatio. They occurred between 1982 and 1985 at or near the Hamlets of Lake Harbour and Cape Dorset in the Northwest Territories. I note that these communities are very remote communities. The offender had pled guilty.

[91] In ***Horne***, Marshall J. made the following comments that I consider worth repeating:

> I turn now to the question of the harm done to the victims of paedophilic sexual practice.

First, it was stated -- and I accept -- that a high proportion of victims suffer severe personality problems after these abnormal experiences. There is a 75% incidence of severe personality problems in these children, as opposed to a 2% incidence in the normal population.

The personality problems of victims are manifest in the victims in a variety of ways. They are thought to be based on feelings of guilt, worthlessness, shame, uncleanliness, and a belief in their own sexual perversion. They show a loss of faith or trust in adults; they evidence great difficulty in future in establishing normal relationships, social or sexual. Nervous disorders, such as neurosis, insomnia, anxiety and depression, often follow. Serious problems of sexual adjustment and sexual orientation in life often also follow. All show a sharp loss in self-esteem and confusion in their own sexual orientation. Some go on to develop frank homosexuality and paedophilia itself.

I want now to relate the problem of paedophilia to the North. Clearly, the problem for all society is a serious one, but it is, I think, even more serious in the Canadian Arctic. Our communities are remote and problematic in this regard, for a number of reasons that I now relate.

The non-native presence in our northern communities consists often of the mounted police officers, the nurses, and teachers. These people, though a minority, represent and speak the language of power -- and indeed they wield power -- controlling law enforcement, health and education, not to mention housing, welfare, and other services, though this is changing as native people take on these roles.

The local people are, of course, accustomed to accepting this authority, so often in the hands of the small white community. Because the language and culture of the people are not the language and culture of the authorities, they are much less inclined to question that authority. By reason of this governmental authority in the communities, these people may be much more vulnerable to sexual predatory activity, be that in the form of homosexual, paedophilic, or [heterosexual] aggression, than is the usual Canadian child in a setting in southern Canada. Governments and courts, in my view, must be cognizant of this greater vulnerability.

To put this another way. Paedophiles, just as they may seek out organizations catering to depressed and fatherless boys to satisfy their sexual appetites, we may expect will prey on native children in the villages of our North, because of the natural innocence of the people here as regards these unnatural sexual perversions.

Two further problems that exacerbate the matter in the North are that in these villages there are serious problems of language, and there is often no access to counselling or medical care for the family or the child

> involved. There is not a single psychiatrist in the Northwest Territories and limited counselling possibilities exist, and certainly there is little help for these native boys in remote arctic communities.

[92] In imposing a sentence of six years on the s. 246.1 of the *Criminal Code* offences and five years on the other charges, all concurrent to each other, Marshall J. stated:

> Considering the principles of sentencing, and considering the nature of the offence and its ravaging effects on its victims, this Court is of the view that deterrence must be the focus of sentencing in these cases. The authorities I have referred to indicate a trend to denunciatory as opposed to rehabilitative sentences. ...
>
> I am of the view, for the reasons I have given, that the sentence should be very strongly denunciative. ...

[93] I wish to be clear that the ***Stewart*** case and the precedents cited within it, have not been referenced as being indicative of the appropriate range of sentence in Mr. Norton's case. Much has changed since these cases. ***Friesen*** has made this point very clear. They are referenced for historical purposes, and for context, as well as to note the recognition, even then, of the harm child victims of sexual abuse suffer.

[94] I recognize that some of the comments, such as in ***Horne***, with the additional learning and understanding that we have today, may not be entirely appropriate, however I want it to be clear that courts, even back then, recognized that serious harm was suffered by child victims of sexual offences.

[95] Most recently, in an unreported oral decision from the Northwest Territories on October 23, 2023, in Fort Simpson, a former Catholic priest, Camille Piche, was sentenced for a s. 149 offence of indecent assault on female. The offence occurred in 1981 and 1982 in Fort Simpson, N.W.T. Mr. Piche was a pastor at the Sacred Heart

Catholic Church, where he served in this capacity from 1981 to 1986. Mr. Piche was 43 years of age in January 1981, and had been an ordained priest since 1963.

[96] The female victim was eight years old in 1981. Mr. Piche, in his role as a pastor, had befriended the family, who were parishioners in Sacred Heart Church, and he was a regular visitor in their home.

[97] On two occasions in 1981 and 1982, while visiting in the victim's home and sitting on a couch beside the victim, Mr. Piche put his hand under the blanket that was on the victim's lap, under her clothing, and digitally penetrated her vagina. The victim's father was in the room at the time, although unaware of what was occurring. Mr. Piche told the victim not to tell anyone.

[98] Lane J. noted the significant harm that this offence had on the now 51-year-old victim, the pain she had gone through, and the anger, hatred, fear, and guilt she had been carrying and living with for years. He noted the presence of her father in the room at the time of these offences, and how this would have contributed to the victim not feeling safe anywhere on earth. He directed many comments directly to the victim in giving his sentencing decision.

[99] Lane J. quoted from paras. 76, 78, and 88 in ***Friesen*** that had been considered in the case of ***R.*** v. ***Gunaratnam***, 2021 ONSC 8270, in paras. 24 and 25. In ***Gunaratnam***, the 60-year-old offender had been convicted after trial of two counts of touching his niece for a sexual purpose in the later 1980s and early 1990s when she was between seven and 13 years of age. He had touched the victim in her breast and vaginal area, as well as digitally penetrating her vagina.

[100] He subsequently also had pled guilty to a charge in British Columbia of sexual interference with a 13-year-old family friend in 2006 or 2007. On this one occasion, the offender had massaged the victim's breasts and nipples, and her vaginal area. Both victims suffered significant harm.

[101] The offender, who ultimately accepted responsibility for these offences, although initially denying having committed them, was sentenced on a joint submission to two years less a day to be served conditionally in the community, plus three years of probation.

[102] Lane J., in the case of Mr. Piche, agreed that the joint submission was appropriate and sentenced Mr. Piche to two years' custody, to be followed by three years of probation.

[103] It is also useful to consider the circumstances of the two sentencing decisions for Mr. Norton's prior convictions. While these cases are unreported, I was able to obtain access to court-certified audio recordings of both sentencing hearings, as well as the trial decision for which Mr. Norton was convicted and sentenced in 2019.

Prior Sentencing Hearings

August 24, 2018

[104] Mr. Norton was sentenced in the Ontario Superior Court of Justice on August 24, 2018, after entering a guilty plea to having committed an offence contrary to s. 151 (sexual interference), following the preliminary inquiry. The offence occurred between January 1, 1991, and December 31, 1995. It appears that the victim was likely between

the ages of nine and 12, as the sexual offending stopped when the victim turned 13 and expressed his wish to dissociate with Mr. Norton.

[105] Leitch J. found that, in Mr. Norton's residence, trailer, car, and on camping trips, Mr. Norton:

- fondled the victim's buttocks and penis;
- encouraged the victim to touch Mr. Norton's penis;
- involved the victim in Mr. Norton's masturbation, including making the victim put his hands around Mr. Norton's penis;
- taught the victim to French kiss, which he was required to do while Mr. Norton masturbated;
- ejaculated on the victim;
- rubbed his penis on the victim's buttocks; and
- performed fellatio on the victim.

[106] Mr. Norton was an Anglican minister in the church the victim's single mother attended at the time of the sexual offending.

[107] The victim's mother trusted Mr. Norton with her son.

[108] Mr. Norton would take the victim on camping trips, he taught him to drive (underage), and he would have the victim stay overnight with him at his residence and on camping trips.

[109] Leitch J. stated that Mr. Norton cultivated trust in order to take advantage of the victim. The Court stated that Mr. Norton caused "significant harm to a vulnerable, helpless, innocent child who was preyed upon by someone who took advantage of his position of trust and the respect and confidence the victim's mother had in him as her religious leader".

[110] Leitch J. stated that Mr. Norton's sexually deviant behaviour was perpetuated against an innocent child, and that the conduct was criminal, exploitive, and done for selfish reasons of personal gratification.

[111] Leitch J. commented on:

- the horrific consequences of such offences, noting the resultant serious psychological harm to victims, which may be permanent (referencing the 2002 Ontario C.A. decision of ***D.D.***);
- the victim's youth and young adult life being disturbed by the hypocrisy between Mr. Norton's actions and his sermons and prayers;
- the negative impacts on the victim's relationships with women and family;
- the victim's self-medicating through the abuse of drugs and alcohol to cope;
- the victim being damaged beyond words with a lifelong impact;
- the victim being cheated of his childhood; and
- the painful experience of the victim having to testify at the preliminary inquiry and having to face Mr. Norton there.

[112] The aggravating circumstances were:

- Mr. Norton occupied a position of trust and he exploited that position;
- the victim's young age of 9 when the offending behaviour started and Mr. Norton being significantly older;
- that there were many prolonged and persistent assaults over a four-year period;
- that Mr. Norton utilized a pattern of incentives to encourage the victim to be in the position he was; and
- that the offending behaviour extended far beyond fondling.

[113] The mitigating circumstances were that:

- Mr. Norton entered a guilty plea (after preliminary inquiry);
- he had no criminal record; and
- Mr. Norton's expression of remorse. On this point, however, the court noted that Mr. Norton appeared to be more focused on what he had lost than on the harm he had caused to the victim, demonstrating a lack of insight in this regard, that he engaged in victim blaming, and he minimized his behaviour and rationalized his conduct.

[114] Mr. Norton's age of 72 at the time of sentencing, and his health factors were taken into consideration, however Leitch J. noted that Mr. Norton's health condition was stable and simply required medication that could be managed in custody and was not hazardous to his health.

[115] In sentencing him to four years custody, Leitch J. stated that Mr. Norton's conduct was to be condemned in the strongest of words.

March 22, 2019

[116] Mr. Norton was convicted in the Ontario Superior Court of Justice, after preliminary inquiry and trial, of three s. 156 offences and one offence under s. 246.1(1).

[117] These offences occurred between 1977 and 1983. The victims were four young Indigenous boys. As in the present case, the victims were altar boys in the church Mr. Norton presided in. They often spent time with Mr. Norton outside of the church setting, involved in extra-curricular activities. They also regularly slept in the same bed with Mr. Norton on overnight visits. They were also noted to have been provided benefits through their relationship with Mr. Norton that were not available to them at home, including, for some, travel outside of Canada. The victims considered him to be a father figure.

[118] One of the victims said that when Mr. Norton left Ontario to work in the Yukon, he felt lost.

[119] The findings of Templeton J., as stated in her judgment, were as follows:

> V1: s. 246.1(1) - Mr. Norton committed sexual assault by placing the victim's hands on Mr. Norton's penis and masturbating him;
>
> V2: s. 156 - The victim was roused from time to time (two or three times) by irritation from stubble from Mr. Norton's face on his body, with Mr. Norton ejaculating on the victim's back;
>
> V3: s. 156 - More than one time this victim woke up in the morning with Mr. Norton's ejaculate/semen on his lips and chin;

> V4: s. 151 - Mr. Norton would place his erect penis against the victim's body. The victim would wake up in the morning with ejaculate on his hand. This occurred between 10 to 20 times.

[120] While the victims' testimony was more detailed, the findings of Templeton J. were limited to what I have indicated above. She either indicated that she was not prepared to make a particular finding on certain incidents, or did not specifically address certain aspects of the victims' testimonies.

[121] These previous decisions in which Mr. Norton was sentenced for sexual offences against children are informative for the purposes of determining a just and appropriate sentence in this case. They, of course, have their own unique set of circumstances. They are not binding precedents, or necessarily more persuasive, simply because I am sentencing the same offender.

[122] I also recognize that the nine-year sentence imposed in 2019 was pursuant to a joint submission. Given that this joint submission followed convictions after preliminary inquiry and trial, however, it is not a case where there were perhaps triable issues that caused the Crown to agree to join defense counsel in proposing a more lenient sentence in exchange for guilty pleas.

[123] These cases were also decided prior to ***Friesen*** and therefore did not have the benefit of what ***Friesen*** said about properly recognizing the extent of the harm children suffer as victims of sexual offences.

[124] This said, both of the sentencing judges in Mr. Norton's prior convictions, when considering the harm to child victims of sexual offences, referred to the ***D.D.*** decision, in

which the harm of sexual offending against children was elaborated upon in paras. 34 to 38 by Moldaver J.A. (as he then was). In particular, at paras. 35 and 36, Moldaver J.A. stated:

> 35 We as a society owe it to our children to protect them from the harm caused by offenders like the appellant. Our children are at once our most valued and our most vulnerable assets. Throughout their formative years, they are manifestly incapable of defending themselves against predators like the appellant and, as such, they make easy prey. People like the appellant know this only too well and they exploit it to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
>
> 36 In this respect, while there may have been a time, years ago, when offenders like the appellant could take refuge in the fact that little was known about the nature or extent of the damage caused by sexual abuse, that time has long since passed. Today, that excuse no longer holds sway. The horrific consequences of child sexual abuse are only too well known.

[125] In ***R.*** v. ***R.K.***, 2023 ONCA 653, the Court referenced ***D.D.*** in para. 63, stating:

> In *R. v. D.D.* (2002), 58 O.R. (3d) 788 (C.A.), at para. 44, this court held that upper single digit to low double digit penitentiary terms will generally be appropriate for regular and persistent sexual abuse of a child that, as here, includes intercourse and other physical violence and is perpetrated by an adult in a position of trust. More recently in R. v. *Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 114, the Supreme Court of Canada confirmed that upper-single digit penitentiary terms for sexual offences against children should be neither unusual nor reserved for rare or exceptional circumstances.

[126] It would be wrong to view ***Friesen*** as being the case that first really opened the door to the harm that child victims of sexual offences suffer, and that courts determining sentences before ***Friesen*** were unaware of the serious and significant harm that these child victims suffer. As can be seen from earlier cases, such as ***D.D.***, many courts were careful to give consideration to the issue of the harm suffered by the child victims of sexual offences, and how that harm needed to be addressed in the sentencing process

for the offender before them. ***Friesen*** provides, however, the most comprehensive analysis of this issue, and incorporates the legislative amendments into this analysis, to provide direction to lower courts.

Appropriate Sentence in this Case

Aggravating Factors

[127] The aggravating factors in Mr. Norton's case are as follows:

- the significant and egregious breach of the trust relationship that Mr. Norton had established with the victims and their parents, not only as an adult and family friend, but as a church Minister and spiritual advisor;

- the young ages of these victims being seven to 10 and eight to 12;

- the multiple instances of sexual offending; three with respect to V1, and 10 to 12 times in respect of V2; and

- the use of incentives to place the victims in a more vulnerable position.

Mitigating Factors

[128] The mitigating factors are as follows:

- This decision by Mr. Norton not to cross-examine either of the victims is mitigating. While the mitigating effect is not the equivalent of a guilty plea that would, unless there was a dispute on the facts requiring a

Gardiner hearing ([1982] 2 S.C.R. 368]), have spared the victims the need to testify at all, it is nonetheless mitigating that the victims had their version of events unchallenged, and thus accepted by Mr. Norton as being the truth.

- It is stressful for victims to wait for their case to be heard, and to prepare to testify at trial, being aware that they would have to tell their story in a public forum and then be subject to cross-examination. I have no information before me to suggest that these victims had any prior knowledge that they would not be cross-examined. These victims were not spared this pre-trial stress and difficulty.

- This pre-trial experience is further exacerbated at trial when the victims have to tell their story, and then undergo the cross-examination experience, where their version of events is challenged, as well as their motivation, credibility, truthfulness, and the reliability of their evidence, all of which adds another layer of stress and difficulty to the process. These victims were spared this latter arduous experience by the decision of Mr. Norton not to have his legal counsel cross-examine them, thus accepting their testimony at face value. This decision merits consideration.

- Had Mr. Norton entered guilty pleas prior to the matter proceeding to trial, the victims may have been spared the need to testify at all. Had guilty pleas been entered early in the process, the pre-trial stress

associated with the knowledge of having to testify, would have been significantly reduced, or eliminated.

- A guilty plea can nevertheless result in a dispute on some of the facts. This can then require a ***Gardiner*** hearing in which the victim still has to testify, in the event that counsel cannot reach agreement on the facts that will be put before the sentencing judge. However, the victim has at least the knowledge in advance that the offender has admitted to the offence, and the ***Gardiner*** hearing can likely be restricted to narrower issues. There may be several reasons why that did not occur in this case; I will not speculate.

- All of the above to say that I am prepared to find that there is some mitigation in the decision, however late, by Mr. Norton to accept the truthfulness of what the victims said happened to them. This is worth something in the balance.

- Mr. Norton's lack of a criminal record at the time he committed these offences. While mitigating, I am aware that this was not the first time he had sexually offended against children, having done this both before and after the offences for which he is being sentenced today. His sexual offending against children was part of a pattern of sexual offending, as can be seen by the 2018 and 2019 convictions. However, in law, he must be treated as a first offender; and

- Mr. Norton's age and health issues. Crown counsel does not contest the affidavit evidence provided in the Notice of Application for Mr. Norton to attend these proceedings by videoconference, that Mr. Norton requires daily medications for Type 2 diabetes, onset Parkinson's disease, heart and stroke prevention, and proper intestinal functioning, as well as continual medical monitoring, but not dialysis, for kidney disease.

Circumstances of Mr. Norton

[129] Mr. Norton was 77 years old at the time of the sentencing hearing. It would appear that his 13 years total current custodial disposition expires in 2031. He is expected to remain in custody until at least sometime in 2027, when he becomes eligible for parole.

[130] Although he has prior convictions for sexual offending against children, the offences for which he is now being sentenced pre-date the dates of those convictions.

[131] Mr. Norton has health issues which make life in general and while in custody more difficult, but I have no evidence that his incarceration is unduly and/or unfairly harsh as a result. Counsel for Mr. Norton has advised that Mr. Norton's health issues do not cause him to be considered as an inmate who would qualify for compassionate leave. His health remains a factor I can take into account, but it is not a highly persuasive factor that would justify a significant reduction in sentence.

[132] Mr. Norton is a PHD graduate in Indigenous studies, becoming a professor following his time as an Anglican priest. I am aware, however, that it is often the case that an offender's reputation and good community standing provide the opportunity for the offender to commit these kind of offences in secret, somewhat sheltered by the trust that the community, and the victims, have in them.

[133] I have been informed that Mr. Norton has made productive use of his time in custody. He is employed as a janitor and custodian. He has established a book club and newsletter, writes book reviews, and encourages literacy of inmates within the institution, also interacting with other institutions in this area.

[134] He is a high-profile offender and therefore there are security concerns for his safety.

[135] He is on a wait list for sex offender treatment and counselling, which was recommended in the Psychological Risk Assessment dated February 15, 2022 (the "Assessment"). I was informed that he is not eligible to take this counselling and treatment until two years before his parole eligibility date, which will be pushed further back by any additional custody imposed for these offences.

[136] The Assessment notes that Mr. Norton was, according to actuarial measures, considered to be in the low range of risk for both general and violent recidivism. He was assessed for sexual offence recidivism and has, on the Static factors, been noted as having a below average risk for sexual offence recidivism, and on Dynamic factors, as being at a moderate risk for sexual offence recidivism. The Assessment states that, as

Mr. Norton has not been able to complete core programming for sexual offending, he has “not yet potentially reduced his dynamic risk for future sexual offences”.

[137] The Assessment states: “[Mr. Norton] said that, since being in prison, he realizes how bad his actions were. He said that he thinks about all the people he hurt and he never wants to put anyone through this again. He noted that a lot of people trusted him and he let them down”.

Application to this Case

[138] There is no question that the primary sentencing objectives in this case are deterrence and denunciation. In particular, sexual offences against children need to be addressed by sentences that send a strong message making clear to offenders, and potential offenders, of society’s strong condemnation of these offences, and that the legal consequences of such offending will be severe. The need to protect the public, in particular children, through denunciatory and deterrent sentences, far outweighs, without eliminating entirely, the rehabilitative considerations that also are required to be engaged in when determining an appropriate sentence.

[139] The long-standing fundamental principle of sentencing, now codified in s. 718.1, is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this case, both are high.

[140] The fact that these two victims are Aboriginal, or Indigenous as is now more commonly used, given all that the Supreme Court of Canada and other Commissions have said about the particular circumstances of Aboriginal peoples in Canada that have

resulted, in part, from the residential school system and other governmental policies, is another factor that requires deterrence and denunciation to be the pre-eminent sentencing objectives. These two victims, as members of a Peoples already recognized as suffering from systemic discrimination and harm and being vulnerable as a result, were further victimized by the actions of Mr. Norton.

[141] The additional fact that Mr. Norton was tasked with being the Indian Ministries Coordinator in the Yukon just increased the vulnerability of the victims to the predatory actions of Mr. Norton, and increases his moral culpability. This is factor that can be taken into account without reliance on the subsequent amendments to the *Code* that have made this a statutorily aggravating factor.

[142] In this case, the breach of trust is at the very high end of the spectrum. Mr. Norton took advantage of these young victims, who were already in a vulnerable position within society. He gained the trust of them and their parents, who no doubt believed that this Minister of God would have both their children's physical and spiritual best interests at the forefront of his interactions with them. He exposed them to many positive social activities; however, these were intertwined with the grooming that took place so that he could take advantage of them for his own sexual fulfillment. Not only did he take away their childhood innocence, when he sexually offended against them, he left them with a sense of abandonment. It is a particularly egregious aspect of the harm that these children suffered, that they considered putting up with Mr. Norton's nighttime sexual behaviour as part of what it cost them in exchange for the activities and trips he involved them in. It certainly has had an impact on their ability to trust others. Children find a way to rationalize the world around them to survive in it. That

rationalization is part of the harm that they suffer when they are the victims of sexual assault: the distortion of right and wrong in the world around them.

[143] The harm done to these two children must be accounted for in accordance with the law as established in ***Friesen***. We know more about the far-reaching extent and scope of the harm of sexual offences against child victims than we used to, and it is a factor that I must consider when determining the appropriate sentences for Mr. Norton. While an adult victim may be able to describe in some detail the harm suffered, children, including these two victims, by their very vulnerability and innocence, likely have no real idea what the extent of the harm they suffered was. The concept of "what may have been" is beyond knowledge and has been irretrievably lost. These victims were very young, and with their innate willingness to trust, and with the innocence of youth, they exposed their lives, unknowingly, to the hurt and harm of Mr. Norton's sexual abuse of them.

[144] The very young ages of these victims, Mr. Norton's role as trusted family friend and spiritual leader, and the undeniable harm these victims suffered on a number of occasions, whether fully understood and expressed by them or not, but considered in accordance with ***Friesen***, are all seriously aggravating factors.

[145] As stated earlier, the decision by Mr. Norton not to instruct his counsel to cross-examine the victims, therefore acknowledging their testimony to be true, provides some mitigation. His health issues, while not to my knowledge placing his life at imminent risk, still must be considered in mitigation. He will be in his eighties when he is eligible

for parole on the sentence he is currently serving. He has a limited number of years of health and life left.

[146] Mr. Norton's lack of a criminal record at the time he committed these offences has a lower mitigating impact, as he was sexually offending against children before he committed these offences; he just had not been caught yet.

[147] The range of sentences in the ***Stewart*** case, and those cases cited within those cases is, as I have stated, informative, but must be considered in light of what ***Friesen*** says about recognizing the harm suffered by child victims of sexual abuse, and reflecting that harm in longer custodial sentence where merited, balancing what the subsequent cases I have accepted say about applying the ***Friesen*** decision to historical sexual offences that pre-date ***Friesen*** and the amendments to the *Code* that occurred after the offences were committed.

[148] I must impose a sentence that takes into account what the courts have said about totality and recognize that Mr. Norton has approximately eight years left on his current sentence, although he will be eligible for parole on those sentences in approximately four years. Any sentence I impose today will push back his eligibility for parole. The reality is that Mr. Norton will likely be approaching, or be in, the latter days of his life at the end of his current period of custody; even more so when the sentences for these offences are imposed and increase the duration of his current period of incarceration.

[149] In the interests of complying with the legal concept of totality, the sentences to be imposed for the offences against these two victims, cannot be as high as they would

have been was he being sentenced for them separately, and not currently incarcerated serving other sentences. Reducing what would otherwise be appropriate sentences is in no way a reflection that these offences are less serious than the other offences, nor a reflection that these victims suffered less harm than any other victim. These were egregious offences that caused great harm. It is a credit to the resilience of these two men that they have made their lives what they have and are positive contributors to society. This does not diminish the moral culpability of Mr. Norton or mean that the victims were not badly harmed.

[150] I will not impose a different sentence for the offence against V1 as compared to V2. They were brothers and were abused in the same general time frame in a similar manner. The difference in number of occasions of sexual abuse they testified to must be balanced against the impact that the crimes against one brother also had on the other. When Mr. Norton sexually abused V1, he also harmed V2; when he sexually abused V2, he also harmed V1. In my opinion each of the two victims should know that I am not prepared to consider the one having been more harmed than the other; or that the abuse of one was worse than the abuse of the other.

[151] I am satisfied that, today, in consideration of the circumstances of this case, with particular recognition of the harm to these two victims as set out to be considered in ***Friesen***, and taking into account the aggravating and mitigating factors, that an appropriate sentence for each offence, were they to be served consecutive to each other, would be three years on each. However, these sentences are to be served consecutive to the remaining time in custody Mr. Norton has on his previous sentences. These sentences end in 2031, which is eight more years. I expect, however, as that Mr.

Norton, given how he has been serving his time to date, that there is a reasonable prospect that he would be released in 2027 at his first parole eligibility date.

[152] Crown counsel has urged me to be careful about wading into the uncertainty of parole considerations. I agree, and appreciate that I do not have knowledge of all the intricacies of parole, including what circumstances could end up causing Mr. Norton to perhaps be denied parole and serve more custodial time past 2027, a potential eight more years in custody. This would be unusual for an offender, but it is not completely unheard of. I am prepared, however, to consider the information provided to me about Mr. Norton's positive potential for his release on parole in 2027 as a point in time for calculating the impact on totality on the sentences to be imposed today.

[153] I agree that, in the normal course, the sentences for Mr. Norton should be consecutive to each other, as there are two child victims who were victimized, one apparently on more occasions than the other. However, I will make the sentences equal and concurrent, so that they more properly reflect what I consider to be appropriate for each victim in the entirety of the circumstances and jurisprudence, and in compliance with the principle of totality.

[154] Therefore, Mr. Norton is to be sentenced to a period of custody of three years on each offence, concurrent to each other, but consecutive to the time in custody that he is already serving.

[155] There will be a SOIRA order for 10 years.

[156] There will be a DNA order.

[157] I will waive the victim surcharge in light of the lengthy period of custody Mr. Norton will still be serving.

[158] I direct that a copy of these Reasons for Sentence and that trial Exhibit 1, including attached Appendix C, and Exhibit 2, shall be provided to Correctional Services Canada.

_____

COZENS C.J.T.C.