SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Webber*, 2019 NSSC 147

Date: 20190117
Docket: CRH 462516
Registry: Halifax

Between:

Her Majesty the Queen

v.

Renee Allison Webber

SENTENCING DECISION

Restriction on Publication: Sections 486.4 & 486.5, 517(1) and 539(1) of the *Criminal Code of Canada*

Judge: The Honourable Justice Christa M. Brothers

Heard: December 10, 11, 2018 in Halifax, Nova Scotia

Oral Decision: January 17, 2019

Final Written: May 9, 2019

Counsel: Cory Roberts and Erika Koresawa, for the Crown
Donald C. Murray, for the Defence

Overview

[1] On September 23, 2018 after trial and deliberations, a jury found Renee Allison Webber guilty of offences pursuant to ss. 286.4, 279.02, 286.3(2), 279.011(1), and 153(1) of the *Criminal Code*. These sections state:

> s. 286.4 Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of
>
> > (a) an indictable offence and is liable to imprisonment for a term of not more than five years; or
> >
> > (b) an offence punishable on summary conviction and liable to imprisonment for a term of note more than 18 months;
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> …
>
> s. 279.02 Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.
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> …
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> s. 286.3(2) Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years;
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> …
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> s. 279.011(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable
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> > (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

> (b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.
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> s. 153(1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who
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> (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person…

[2] In addition, Ms. Webber pleaded guilty to a charge pursuant to section 266, which states:

> s. 266 Everyone who commits an assault is guilty of
>
> (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
>
> (b) an offence punishable on summary conviction.

[3] The defence raised *Charter* challenges to the mandatory minimum sentences contained in ss. 279.02(2), 286.3(2) and 279.011(1)(b).

Agreements of Counsel

[4] At the outset, I will review certain agreements or positions taken by the parties that reduced the decisions left for this Court.

[5] The Crown conceded that if the defence was successful in their challenges to the constitutionality of the mandatory minimums, that is if the mandatory minimums are found to be a violation of section 12 of the *Charter of Rights and Freedoms* ("*Charter*"), then the mandatory minimums could not be saved by section 1 of the *Charter*.

Bottomline Decision in relation to Mandatory Minimums

[6] I am left to consider whether the mandatory minimum sentences imposed by ss. 279.02(2) and 279.011(1)(b) violate s. 12 of the *Charter of Rights and Freedoms*, which provides:

> 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[7] While the Crown argued the mandatory minimum does not violate section 12 in regard to the circumstances of the offender and the offences before the court, counsel conceded that the Court should consider the constitutionally of the mandatory minimum sentences in reasonably foreseeable circumstance.

[8] I have considered the written and oral arguments of counsel. I have read all the cases provided. Counsel did an excellent job briefing the law and provided me with a vast amount of jurisprudence to consider. In an effort to deal with this matter expeditiously, I am going to give a bottom line decision on the challenge to the mandatory minimums. My written reasons will follow. I do so in an effort to deal with these matters expeditiously for all and in particular the offender.

[9] I accept the defence arguments that the mandatory minimums under ss. 279.02(2) and 279.011(1)(b) violate s.12 of the Charter. The Crown has conceded that if this is my decision, the mandatory minimums imposed by those sections can not be saved by s. 1 of the Charter.

Overview of Sentence

[10] I will now go on to the review what is the fit and proper sentence in the circumstances for this offender. Before I do so, I will start with a recent quote from an Ontario Court which summarizes the evils and realities around human trafficking.

[11] In *R. v. Lopez* 2018 ONSC 4749, the court had the following to say. While in this decision mention is made of men exploiting women the statement equally applies when it is women exploiting other women:

> 52. For many years Canadian courts have decried the inherently exploitive, coercive and controlling actions of "pimps" in relation to prostitutes. The unfortunate contemporary reality of the sex trade is that male pimps typically are involved in the exploitation, degradation and subordination of women. At its most basic level, it is a form of slavery, with pimps living parasitically off the earnings of prostitutes. Pimps exercise their control over prostitutes by means of a variety of tactics including emotional blackmail, verbal abuse, threats of violence and/or pure physical violence and brutality. The prostitutes that are the subject of this coercive exploitation are typically vulnerable and disadvantaged women, who have been manipulated and taken advantage of by the pimp. Even in cases where their initial participation in the sex trade is voluntary, including perhaps their business association with the pimp, and adopted for reasons of perceived increased security and safety in an inherently dangerous line of work, the relationship invariably becomes one-sided and exploitive. Prostitutes are ultimately forced, in one way or another, to provide sexual services for money in circumstances where they would not otherwise have agreed to such services, and the money earned from those sexual

> services is collected by the pimp. Accordingly, in a very real and practical sense, pimps traffic in the human resources of prostitutes, callously using their sexual services as an endlessly available commodity to be simply bought and sold in the market place. Accordingly, pimps have been aptly described as a "cruel, pernicious and exploitive evil" in contemporary society…

Circumstances of the Offences

[12] The first issue to be dealt with is the circumstances of these offences.

[13] There are no reasons for judgement setting forth the findings of fact, given the trier of fact here was a jury. In sentencing the offender, Renee Webber, I note she is entitled to be sentenced based on the most lenient view of the circumstances of the offences consistent with the jury verdict. (*R. v. Landry*, 2016 NSCA 53, at para. 48). To rely on any aggravating facts, I must be convinced of that fact beyond a reasonable doubt.

[14] I must determine the facts in order to impose a sentence. In doing so, I make reference to the *Criminal Code* at s. 724(2) which reads:

> 724(2) Where the Court is composed of a judge and jury, the Court
>
> (a) Shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilt; and
>
> (b) May find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

[15] I also have considered the guidance in *R. v. Ferguson*, 2008 SCC 6. I am only required to make the factual determinations that are required to fashion a fit and proper sentence. I must come to my own independent determinations of the facts.

[16] Before embarking on this exercise, I keep in mind the comments of the Nova Scotia Court of Appeal in *R. v. Landry*, *supra*:

> [49] I would distill the rules for a court to follow as:
>
> 1. The sentencing judge shall accept as proven all facts, express or implied, that are essential for the jury's guilty verdict.
> 2. When the jury finding is ambiguous, the sentencing judge should not attempt to follow the logic of the jury. Instead, he or she must make their own independent determination as to the relevant facts.
> 3. The sentencing judge should only find those facts necessary to permit the proper sentence to be imposed.

> 4. The sentencing judge may not find as fact things that were rejected by the jury's verdict.
> 5. For any aggravating fact, the sentencing judge must be satisfied that the evidence is sufficiently cogent to enable her to find it proved beyond a reasonable doubt.

[17] The Court is bound by the express and implied factual implications of the jury's verdict (*R. v. Brown*, [1991] 2 S.C.R. 518 (SCC)).

[18] The Crown proffered different paths towards a conviction. The Crown relied on s. 21of the *Criminal Code* which provides:

> Everyone who is a part to an offence who
>
> (a) actually commits it;
>
> (b) does or omits to do anything for the purpose of aiding any person to commit it; or
>
> (c) abets any person committing it of the *Criminal Code*.

[19] The guilty verdicts could have been on the basis that Renee Webber was a principal, an aider, or had a common purpose with Kyle Pellow, who pleaded guilty and was sentenced before this trial. Regardless, Renee Webber is culpable for the offences she was convicted of. (*R. v. Akapew,* 2009 SKCA 137).

[20] The offender testified. The jury was given the *WD* instruction – that is the instruction originating in the familiar direction suggested by Cory, J. in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. In convicting Renee Webber, the jury clearly did not believe her testimony. Further, the jury clearly did not find her testimony raised a reasonable doubt.

[21] Given this I am sentencing Renee Webber on the following facts:

1. The complainant was 16 years old throughout the events in question and the offender knew this at the time;
2. The offender was 40 years old at the time of the offences and was 43 at sentencing;
3. The complainant left her mother's home in or about September or October 2015. After staying for a period of time at a friend's home, the complainant moved into the offender's home;
4. The offender participated, along with Kyle Pellow, in luring the complainant into providing sexual services for consideration through

promising she would be a part of a team, with Ms. Webber and Mr. Pellow. The offender promised the complainant she would have a better life and would eventually return to school and have a family herself. The complainant was told she would provide sexual services and would be protected by Kyle Pellow and the offender would participate in the team by stripping;

5. Renee Webber drove the complainant several times to Kyle Pellow who would drive the complainant to different locations to provide sexual services for consideration;

6. The offender drove the complainant to Moncton on one occasion with the purpose of the complainant providing sexual services for consideration, while the offender sat in the room and later took the money that the complainant earned;

7. When the complainant performed sexual services for consideration, she provided the money she earned to Kyle Pellow aside from one occasion in Moncton when the offender was given the money the complainant earned. While in Moncton, the offender told the complainant not to disclose to anyone that she and Kyle Pellow were trafficking her;

8. The offender reserved three hotel rooms where the complainant performed sexual services for consideration;

9. The offender was a party to the complainant's advertising of sexual services for consideration, encouraging her to post the advertisements;

10. On one occasion when both Renee Webber and Kyle Pellow travelled to Moncton bringing the complainant to provide sexual services for consideration, Renee Webber touched the complainant's breasts and stomach, digitally penetrated her vagina and forced the complainant's face into the offender's vagina;

11. On May 22, 2016, the offender admitted to exiting a vehicle being driven by Kyle Pellow and slapping the complainant across the face; and,

12. While the offender admitted to assaulting the complainant, in May 2016, she did not employ violence to lure or keep the complainant performing sexual services for consideration between October 2015 until the end of November 2015.

Position of the Parties

Crown

[22] The Crown acknowledges that the elements of an offence in section 286.3 of the *Criminal Code* are largely mirrored in s. 279.011. The latter has the added prohibited elements of recruiting, transporting, transferring or harbouring a victim. In the circumstances, this calls for the application of the rule against multiple convictions in *Kienapple. v. R.*, [1975] 1 S.C.R. 729. Consequently, I have entered a judicial stay in regard to the conviction under s. 286.3.

[23] The Crown takes the position that before consideration is given to the inflationary floor created by the mandatory minimum sentence, the applicable range of sentences for the offences under sections 279.011, 279.02(2) and 286.4 are in the four to six-year range. The Crown cautioned the court from relying too much on older, pre-*Bedford* sentencing decisions and also raised the argument that older cases with lesser ranges do not reflect the current thinking concerning sentencing for sexual offences committed against children. In that regard, the Crown argues as courts become more familiar with the horrific and long-term consequences for victims of such sexual offences, the more recent cases impose higher or harsher sentences.

[24] With regard to the s. 153 offence, the Crown submits the sentence should run consecutive to the trafficking offences and concurrent with the s. 266 offence. The Crown submits the sexual exploitation offence was not undertaken as a means of control in relation to the trafficking offences but was for the offender's personal sexual gratification. The Crown argued this offence, committed in concert with Mr. Pellow, amounted to a gang rape of the complainant.

[25] The Crown referred to *R. v. E.M.W.* 2011 NSCA 87, where the court reviewed the range of sentences for sexual assault on a child without intercourse, from a suspended three-year sentence for repeated sexual touching by a psychologically ill offender to six years involving digital penetration and an unsuccessful attempted intercourse over the period of years.

[26] Based on the cases reviewed, the Crown submits a sentence of two to 2.5 years for the s.153 offence was appropriate, to be served consecutively.

[27] In relation to the s. 266 conviction, the Crown submits any sentence should run consecutively to the trafficking offences or the sexual exploitation offence. The Crown suggests a four to six-month sentence.

Defence

[28] The defence acknowledges that convictions for offences involving the selling of sexual services of a person under the age of 18 must result in a period of incarceration. Further, the defence concedes the convictions require a sentence of imprisonment in a federal institution – that is, a period of over two years. This is despite the fact that Renee Webber is a first-time offender. The defence argues that a period of three years imprisonment is appropriate due to the following factors argued by the defence:

> a) Renee Webber's actual participation in prostitution-related activities with the complainant, over the course of perhaps four weeks in November 2015, may have involved only about five or six days;
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> b) The complainant's prior involvement and active interest in pursuing the business of prostitution, which was not pursued for the month of December 2015 while living with Ms. Webber, was again pursued by the complainant and at an elevated level after leaving Renee Webber's home;
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> c) The absence of force, violence, or threats by Renee Webber to compel the complainant to continue to involve herself in the prostitution business;
>
> d) The absence of evidence of earnings being turned over by the complainant or anyone else to Renee Webber, except perhaps on the occasion of a Moncton bachelor party where it was asserted that the complainant and Renee Webber only walked around in their underwear;

[29] The defence also argued that several ancillary orders are necessary.

Circumstances of the Offender

[30] A pre-sentence report was provided on November 13, 2018.

[31] The report indicates the 43-year-old offender is the single mother of four children ranging in age from 24 years old to 12 years of age. She had an unremarkable childhood in that she reported neither abuse nor neglect and described her childhood as positive.

[32] The offender completed Grade 12. She completed a one-year Personal Care Workers course when she was 23. She worked for three years at a nursing home,

Oakwood Terrace, as a personal care worker. She then worked at the Canadiana Restaurant and Lounge for seven years until she was charged with the matters she ultimately was convicted of. In February 2018, she began full time employment at the Coastal Inn in Halifax where she continued to be employed as a supervisor. Her last day was December 7, 2018. She has been invited to return to this employment as a housekeeping supervisor when she is able.

[33] Ms. Webber married her first husband at the age of 20. This relationship ended after ten years. She had two other common-law relationships which resulted in her two youngest boys, who are 18 and 12.

[34] This is a positive pre-sentence report. It is unremarkable in terms of any negative aspect. Ms. Webber has a supportive daughter and mother and will clearly have a support system to draw on when she finishes serving her sentence.

Aggravating & Mitigating Factors

[35] I accept that there are aggravating factors present in the circumstances of the commission of these offences which must be considered.

[36] The complainant was 16 years of age throughout the time of these offences. Her young age, and the fact that the offender knew of her youth, is an aggravating factor. The abuse of a young person, 16 years of age, must be considered in fashioning an appropriate sentence.

[37] Let me put this in context. As a 16-year-old, the complainant was to be commencing Grade 10 at a local high school. Her life should have consisted of such things as school, homework, time spent with friends, planning for her future, exploring ideas about potential careers and education after high school, extra curricular activities and all the normal things that, as a society, we envision when we think of young people enrolled in high school. Instead, she was involved in an insidious underworld where she was exploited, abused and commodified and eventually used for Renee Webber's own sexual gratification. The complainant was still a child herself. Instead of taking selfies with friends, as teenagers do these days, her pictures were posted on backpages where she was advertised for sale.

Mitigating Factors

[38] Renee Webber does not have a prior criminal record. This is mitigating. While I can not consider her lack of responsibility or lack of remorse as a aggravating factor, I do note that the offender's lack of acceptance of responsibility and failure

to acknowledge the significant level of harm she has caused for this purpose is relevant in "determining the extent to which the sentence I impose may promote a sense of responsibility in Ms. Webber and provide acknowledgement of the harm done to the victim…" (*R. v. May*, 2018 BCCA 391, at paras 23 and 33-35) To be clear the offender's lack of remorse and failure to accept responsibility is not an aggravating factor.

Victim Impact Statement

[39] Two victim impact statements were provided to the court: the first from the complainant and the second from the complainant's mother. I will address the complainant's statement first. At the outset, let me say there are portions of the victim impact statement which are not admissible. I have disregarded those portions such as instances where the offender is addressed and not the offence.

[40] The complainant reproduced for this sentencing the victim impact statement she provided for the sentencing of Kyle Pellow in the Provincial Court. This victim impact statement is dated May 15, 2018. I made inquiries as required by the *Criminal Code* concerning the wish of the complainant to provide an updated victim impact statement, or one directed towards this offender in relation to this sentence. I was told inquiries were made but the complainant did not wish to rewrite her statement. No objection by the Defence was made, and I received this statement.

[41] I have considered the admissible portions of the statement that are not directed toward the offender but instead the offence. I have considered in fashioning a fit and proper sentence that the complainant has been significantly and continually affected by the offences. Despite this, and despite the emotional impact this has had on her, I note her strength in testifying before the court and members of the jury and her participation in this matter. I commend her for her courage and composure. In fashioning this sentence I cannot erase what the complainant endured from approximately October 2015 until the end of November 2015 or early December 2015. I cannot erase the subsequent assault and I cannot erase the memories of those events and the lingering emotional harm and toil it has taken. I can only apply the sentencing principles guiding me to denounce, deter and hopefully rehabilitate this offender.

[42] The complainant's mother also submitted a victim impact statement and read it before the court. I struck portions of the statement given its non-compliance with the *Criminal Code*. I have considered this mother's emotional suffering, her agony, worry, hopelessness and fear during the course of and as a result of these offences. I

of course accept that any mother in her position would be suffering and would be experiencing profound pain at the thought of the offences that were committed against her child. No parent and no young person should have to endure what this mother and complainant endured.

[43] Both mother and daughter are, together, mutually supporting a process of healing, a process of healing required because of the commission of these offences.

Sentencing Principles & Analysis

[44] Any sentence imposed on the offender must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The Court must be guided by the aggravating and mitigating factors in the case as well as the objectives of sentencing.

[45] Pursuant to s. 718 of the *Criminal Code*, the "fundamental purpose" of sentencing is to contribute to "respect for the law and the maintenance of a just, peaceful and safe society" by imposing "just sanctions" that have one or more of the following objectives: (a) to denounce unlawful conduct; (b) to deter the offender and others from committing offences; (c) to separate offenders from society where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harm done to victims or the community; and (f) to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and the community.

[46] Pursuant to s. 718.01 of the *Criminal Code,* when a court imposes a sentence for an offence that involves 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.

[47] Pursuant to s. 718.1 of the *Criminal Code*, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[48] Pursuant to s. 718.2 of the *Criminal Code*, 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 aggravating or mitigating circumstances relating to the offence or the offender, an, without limiting the generality of the foregoing
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> > i. evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age,

> mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
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> ii. evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
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> 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,
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> 1. evidence that the offence has a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
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> iv. evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
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> v. evidence that the offence was a terrorism offence, or
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> vi. evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act,
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> shall be deemed to be aggravating circumstances.
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> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
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> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and,
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> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[49] While the *Criminal Code* does not set out the sentencing principles in any kind of hierarchy, section 718.01 directs that primary consideration be given to denunciation and deterrence for an offence involving the abuse of a person under 18 years of age.

[50] Primary consideration of denunciation and deterrence means that other principles such as rehabilitation of the offender must necessarily take a "back seat". While the Court must consider the principle of rehabilitation and the individual circumstances of the offender, denunciation and deterrence in cases like these should

not be "improperly discounted in a search for an individualized solution": *R. v. M.F.S.*, 2008 ABCA 157, para. 12.

[51] Courts have repeatedly emphasized that the offence of human trafficking and "pimping" when it involves forced prostitution or sex work of a young person is a form of sexual assault. Indeed, those who traffick young persons have been likened to child molesters, and abusers and Courts have emphasized that the principles of deterrence and denunciation receive primary consideration; I refer to *R. v. Finestone*, 2017 ONCJ 22:

> [31] In recent years the Appellate courts have consistently maintained that in sentencing child sexual offenders and predators the objectives of general deterrence and denunciation are paramount. In *R. v. Woodward* 2011 ONCA 610 (CanLII), Justice Muldaver [sic] stated, at paragraphed 76,
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> > In so concluding, I wish to emphasize that when trial judges are sentencing adult sexual predators who have exploited innocent children, the focus of the sentencing hearing should be on the harm caused to the child by the offender's conduct and the life-altering consequences that can and often do flow from it. While the effects of a conviction on the offender and the offender's prospects for rehabilitation will always warrant consideration, the objectives of denunciation, deterrence, and the need to separate sexual predators from society for society's well-being and the well-being of our children must take precedence.
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> [32] In *R. v. D.D.*, 2002 CanLII 44915 (ON CA), [2002] O.J. No. 1061 (CA), the leading authority in Ontario on sentencing child sexual abuse, the court clearly stated that the focus on sentencing these types of offenders must be on denunciation, deterrence and protection of the public. The court stated at paragraph 34,
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> > The overall message however, is meant to be clear. Adult sexual predators who would put the lives of innocent children at risk to satisfy their deviant sexual needs must know that they will pay a heavy price. In cases such as this, absent exceptional circumstances, the objectives of sentencing proclaimed by Parliament in s.718(a), (b) and (c) of the Criminal Code, commonly referred to as, denunciation, general and specific deterrence, and the need to separate offenders from society, must take precedence over the other recognized objectives of sentencing.
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> [33] I am mindful that the above cases involved findings of guilt for sexual assaults on a young person, but the offence of human trafficking when it involves forced prostitution of a young person is a sexual assault. I therefore find that the comments outlined above are applicable to this case. I note that Justice Wien in *R. v. A.A.*, [2012] O.J. No. [6256] (S.C.J.) likened pimps to child molesters and abusers. Therefore, in sentencing Mr. Finestone I must focus primarily on the objectives of deterrence and denunciation. In sentencing Mr. Finestone the court

> must also be mindful of the harm caused by those that traffic in young girls. This is relevant to both the specific inquiry about the appropriate sentence but also to the broader constitutional question. In *R. v. Nur*, 2013 ONCA 677 (CanLII), [2013] O.J. No. 5120 (C.A.) affirmed by the Supreme Court of Canada in *R. v Nur*, 2015 SCC 15 (CanLII), [2015] 1 S.C.R. 773, Doherty [J.A.]. held that in assessing the appropriate sentence, the court must consider the harm targeted by the elements of the crime and the moral culpability required to establish guilt for the crime (paras 83-87). There can be no doubt that severe harm is caused even by the least serious cases of child trafficking. As Warkentin J. held in *R. v. Byron*, [2014] O.J. No. 723 (SCJ) at paragraph 36,
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> > All cases of this nature must be taken seriously. Young people must be protected from being trafficked, exploited and abused in this fashion. Sadly, in an era of social media and the use of the internet, the on-line advertisements for sexual services continually victimize those who have been forced into prostitution against their will because it is impossible to remove those images from the internet. This is particularly tragic when the individual is a minor, as was IB
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> [34] The horrors and evils of prostitution, especially when young persons are involved, are well documented and beyond dispute. As justice Trotter noted at paragraph 10 of *R. v. Burton*, [2013] O.J. No. 2423 (S.C.J.),
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> > The social ills and dangers associated with prostitution and juvenile prostitution in particular, are well-recognized and accepted by social science and reflected in the legal literature.
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> [35] In light of all these comments, it is clear that the focus of any sentencing for offences arising from the sexual exploitation of children, even the sentencing of youthful first offenders, has to be on denunciation and general deterrence.

[52] Recently, in *R. v. Gray*, 2018 NSPC 10, Judge Buckle sentenced an offender for the offences of obtaining a material benefit from human trafficking, advertising sexual services, and uttering threats. This was in relation to an adult victim, not a young person. Judge Buckle reviewed the law and the newly enacted provisions, but commented that the underlying criminal conduct and criminalization of the conduct was not new. Judge Buckle noted that the offences cried out for denunciation. She made the following comments which are of assistance in considering the fit and proper sentence in this case:

> [32] A person who chooses to be employed in the sex trade may be doing just that – making a choice over his or her own body and employment. However, the reality is that in most situations the relationship between the pimp and the prostitute does not involve any real choice or true employment for the prostitute. The pimp forces or coerces the prostitute to use his or her body with little or no compensation. In those circumstances, the relationship cannot be viewed as employment in the sex trade, it is exploitation. As a result, that

> relationship has been described, correctly in my view, as a form of slavery. (See for example: *Reference re ss. 193 and 195.1(1)(c*) of the *Criminal Code 1990* CanLII 105 (SCC), [1990] S.C.J. No. 52, at para. 95). Viewed in that way, it is entirely appropriate to categorize some aspects of "pimping" as human trafficking.
>
> [33] Courts have repeatedly and consistently commented on the parasitic and exploitive nature of the relationship between pimp and prostitute. The judgement of Justice Hill in *Miller* ([1997] O.J. No. 3911 (OCJ)) summarizes much of the judicial commentary that came before. For example, in *Reference re ss. 193 and 195.1(1)(c),* Justice Dickson described the reality of contemporary prostitution as involving "the exploitation, degradation and subordination of women." (at para. 2). In *The Queen v. Downey and Reynolds* (1992), 1992 CanLII 109 (SCC), 72 C.C.C. (3d) 1 (S.C.C.), Cory J. described the pimp as the person who "lives parasitically off a prostitute's earnings". (para. 40). In *Regina v. Grilo* (1991), 1991 CanLII 7241 (ON CA), 64 C.C.C. (3d) 53(Ont. C.A.) at para. 27, the court stated:
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> > "The true parasite whom s. 212(1)(j) seeks to punish is someone the prostitute is not otherwise legally or morally obliged to support. . . . Living on the avails is directed at the idle parasite who reaps the benefits of prostitution without any legal or moral claim to support from the person who happens to be a prostitute."
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> [34] In *Miller,* Justice Hill went on to say:
>
> > "The relationship between pimp and prostitute is almost inevitably inherently coercive and exploitative. The degrading domination of the pimp perpetuates the prostitute's lack of self-esteem and self-worth. Street pimps promulgate violence as their primary control mechanism. Other pimps, particularly those administering adult entertainment or escort service operations, employ more subtle pressure including preying upon the economic dependency of the prostitutes employed. In other words, the demonstration of domination varies from case to case."
>
> [35] These are offences that cry out for denunciation.

[53] The exploitation of the complainant is akin to or a form of slavery. In convicting Renee Webber, the jury accepted that the Crown had proved beyond a reasonable doubt that Ms. Webber, either as a principal, aider, or through a common purpose with Kyle Pellow, committed these offences. Her actions in driving the complainant to Mr. Pellow, renting hotels where the complainant was exploited, taking the complainant to Moncton and there taking money from her after she provided services, were all consistent and continual actions by Ms. Webber over a period of time. While the defence says the time frame was three weeks, I agree with the Crown that the evidence indicates that the time frame was more in the range of

four to six weeks. This is the period of time during which the complainant, a vulnerable young person, was exploited in a horrific and shocking way.

[54] The complainant was a vulnerable young person when Renee Webber met her. She was engaging in risky behaviour and had recently left her mother's home. She was a vulnerable young person who was exploited in a reprehensible way that cries out for denunciation and deterrence.

[55] Before I deal with each of the specific trafficking offences on their own, I have considered the decision in *R. v. Tang*, (1997), 200 A.R. 70, 1997 ABCA 174 (Alta. C.A.), which sets forth factors for the court to consider when sentencing for what used to be called pimping offences but are now called trafficking offences.

Tang **Factors**

[56] Both the Crown and defence referred to *R. v. Tang*, *supra*. In that decision, the court identified factors to be weighed, considered and assessed when fashioning a fit and proper sentence in relation to the old pre-*Bedford* offences, which are equally applicable to the current human trafficking offences. The court said:

> 11 In assessing the degree of criminal culpability of a pimp living off the avails of child prostitution, it is not enough to simply focus on the level of control the pimp exerts over the child prostitutes or on the money and benefits he extracts. While these will certainly be factors in evaluating culpability, they are by no means exhaustive. Nor does it follow that a financially unsuccessful pimp can argue that this necessarily makes him less culpable than would otherwise be the case anymore than a rich pimp can argue that his prostitution proceeds include only a minor part of his income. It is not a balance sheet exercise in which the Court assesses degrees of profitability. A whole panoply of factors, in addition to the usual aggravating and mitigating ones, should be considered including:
>
> > 1. The degree of coercion or control imposed by the pimp on the prostitute's activities;
> >
> > 2. The amount of money received by the pimp and the extent to which the pimp allowed the prostitutes to retain their earnings;
> >
> > 3. The age of the prostitutes and their numbers;
> >
> > 4. Any special vulnerability on the part of the prostitutes;
> >
> > 5. The working conditions in which the prostitutes were expected or encouraged to operate, including their physical surroundings in terms of soliciting customers and servicing customers, and safety concerns, in addition to whether appropriate health safeguards were taken;

> 6. The degree of planning and sophistication, including whether the pimp was working in concert with others;
>
> 7. The size of the pimp's operations, including the numbers of customers the prostitutes were expected to service;
>
> 8. The duration of the pimp's exploitative conduct;
>
> 9. The degree of violence, if any, apart from that inherent in the pimp's parasitic activities;
>
> 10. The extent to which inducements such as drugs or alcohol were employed by the pimp;
>
> 11. The effect on the prostitutes of the pimp's exploitation;
>
> 12. The extent to which the pimp demanded or compelled sexual favours for himself from the child prostitutes.

[57] In *R. v. Miller,* [1997] O.J. No. 3911 (Ont. Ct. J. (Gen. Div.)), Justice Hill added the following factors to the *Tang* list at paragraph 39:

> The age of the customers attracted to the bawdy-house operation;
>
> Steps taken by the accused to evade detection by the authorities;
>
> Attempts by the accused to prevent a prostitute from leaving his employ.

[58] The following is my application of the *Tang* factors to this case. I acknowledge the terms used in the factors are now antiquated but these factors should be considered.

[59] **Degree of coercion or control** – The complainant had some brief experience in the sex trade before she met the offender. To be clear, I do not agree with the defence that this reduces the offender's culpability or should reduce the sentence. Simply because a young person was vulnerable does not reduce the effect of the exploitation committed by the offender. The offender, much older than the complainant, helped to convince her to come live with the offender, where the complainant would work as part of a team. The complainant had a falling out with her friend. The offender told the complainant that she was prettier than her friend and that she could provide much more for complainant, "kind of like a mother would." The offender promised to help the complainant to go back to school, have a family, and have a good life. However, the offender and Mr. Pellow quickly began to exploit the complainant, taking money the complainant earned from providing sexual services for consideration and controlling how and when she provided those services, contrary to the initial promises of "teamwork."

[60] **Amount of money received and extent to which pimp allowed prostitutes to retain their earnings** – The complainant was not allowed to keep any of the money she earned from providing sexual services for consideration. This money went to either Mr. Pellow or, on at least one occasion, to the offender. The complainant was unable to say how many "clients" she provided services to, as she has tried to forget. She was able to give an estimate for rates, and said she often met with multiple men on any given weekend. The offender actively encouraged the complainant to post ads in order to meet with more men. In Moncton, the offender arranged to negotiate with men.

[61] **Age of prostitutes and their numbers** – The complainant was 16 years old when she was recruited by the offender and Mr. Pellow, and during the entire time she was under their control. The offender was 40 years of age.

[62] **Any special vulnerability of the prostitutes** – The complainant was 16 years old when she was being exploited by the offender. The offender took advantage of the fact that the complainant's living situation was tumultuous and gave the complainant hope of a better life.

[63] **Working conditions, including safety concerns and health safeguards taken** – The complainant was brought to other cities and was dropped off at hotel rooms or the homes of men to whom she provided sexual services.

[64] **Degree of planning and sophistication, including whether pimp working in concert with others** – The degree of planning and sophistication was commensurate with the fact that this was a three-person business operation with Mr. Pellow purportedly providing protection, the offender stripping, and the complainant providing sexual services for consideration. The complainant was the only person performing such services, and all the money went to the offender and Mr. Pellow. The offender encouraged the complainant to post ads to Backpages. She also took the complainant either directly to other cities or to Mr. Pellow, who would then transport the complainant to other cities. The offender booked hotel rooms twice in Moncton and once in Halifax for the purpose of the complainant engaging in sexual services for consideration, using her credit card. The offender rented cars that Mr. Pellow used to transport the complainant to various locations in order to perform sexual services for consideration.

[65] **Size of pimp's operation, including number of customers prostitute expected to service** – There is no evidence of the exact number of customers the

complainant was expected to service. The complainant has stated she tries to forget the much older men, but did estimate several a night.

[66] **Duration of exploitative conduct** – The complainant was exploited by the offender and Mr. Pellow for approximately four to six weeks, during which the complainant was trafficked, engaging in underaged sex work on a regular basis. The complainant was kept at Mr. Pellow's mother's house for approximately a week in order to provide sexual services for consideration during that time. In addition, the complainant was brought to Moncton on at least three occasions, once to the Chebucto Inn, and once to Toronto, all for the same purpose. This exploitation only ended when the complainant was sexually violated by the offender and was told to date the offender's son.

[67] **Degree of violence, if any, apart from that inherent in the pimp's parasitic activities –** There is no allegation that the offender used overt violence during the time that the complainant was being exploited. However, the offender told the complainant not to tell anyone about her exploitation.

[68] **Extent to which inducements such as drugs or alcohol were employed by the pimp** – none

[69] **Effect on the prostitutes of the exploitation** – The court can assume that this type of exploitation will always have an impact on a vulnerable 16-year-old victim. Contrary to the offender's suggestion, the offender and Mr. Pellow were the only persons involved in exploiting the complainant during the time the complainant engaged in sex work, from the end of October 2015 until the end of November or beginning of December 2015. There is no evidence that others engaged in such control, direction, or influence over the complainant's movements such that they were involved in exploiting her. Likewise, the complainant did not exploit herself; the fact that she engaged in sex work independently afterwards is irrelevant to the impact that the offender's exploitation had on her.

[70] **Extent to which pimp demanded or compelled sexual favours** – The sexual exploitation forms a separate charge for which the offender will be sentenced.

[71] **Age of customers attracted to the service** – The complainant testified to having sex with men who were much older than her.

[72] **Any steps taken to avoid detection by authorities** – The offender dropped the complainant off to meet Mr. Pellow in parking lots. The offender told her not to tell anyone.

[73] **Any attempts by the offender to prevent the prostitute from leaving** – none.

Criminal Code Section 279.02(2) – Receiving a Financial or Material Benefit

[74] Renee Webber was convicted of receiving a financial or other material benefit from trafficking a person under the age of 18 years. The formal charge read:

> … that she at the same time and place aforesaid, did unlawfully receive a financial or other material benefit knowing that it resulted from the commission of an offence under subsection 279.011(1), contrary to Section 279.02 of the *Criminal Code*.

[75] Judge Buckle described this offence in *R. v. Gray*, *supra*, as follows:

> 31. The offence under s. 279.02 is now part of the general scheme of laws directed at "trafficking in persons" and the offences under s. 286.4 and 286.2 are categorized under the heading "commodification of sexual services". These specific offences and their categorization within the *Criminal Code* may be relatively new but the underlying conduct and the criminalization of that conduct is not. The offences, previously referred to using phrases such as "procuring" and "living off the avails of prostitution", and Mr. Gray's role in those offences are not new. Simply put, Mr. Gray was a pimp.

[76] The range of sentences for such offences are vast. The older offence of living of the avails of a person under the age of 18 and the current offence post-*Bedford* of receiving a material benefit from the trafficking of a person pursuant to s. 279.02(2) are as vast as 12 months to 8 years. I acknowledge that the lower range of sentences below 24 months are all older cases.

[77] Reviewing the range of sentences, I have considered a wide range of cases, which I have listed in Appendix "A".

[78] Renee Webber was convicted of this charge. The evidence before the jury supports a finding that she received funds on at least one occasion in Moncton. In the circumstances and, taking into account this occasion and the circumstances of the offender, being her first such offence, I conclude that Ms. Webber should receive an 18-month sentence for the offence under s. 279.02(2).

Criminal Code Section 279.011(1) – Human Trafficking

[79] Renee Webber was convicted of recruiting, transporting, transferring, harbouring or exercising control direction or influence over the movements of the

complainant, a person under the age of 18, for the purposes of exploiting her or facilitating her exploitation.

[80] It is difficult to define a range of sentences for the offence of human trafficking, given that it encompasses a wide range of activity. This has been acknowledged in such cases as *R. v. A.E.,* 2018 ONSC 471:

> 65. Having canvassed the authorities provided to me by counsel, I conclude that it is, as I noted, extremely difficult to define a usual range for the offence of human trafficking. Again, this is largely due to the variety of circumstances in which the offence may be committed. The yardsticks are far from settled, particularly in view of the imposition in 2014 of mandatory minimum sentences. It would appear that prior to 2014, the range was probably two or three years at the bottom end to six or seven years at the top end, depending of course on the aggravating and mitigating circumstances of the case. Since 2014, the floor has been elevated and I would say, provisionally, that the usual range appears now to be roughly four to eight years, again depending on the aggravating and mitigating circumstances present.

[81] In *Finestone*, *supra* the range was between 12 months and 6.5 years.

[82] It is clear the younger the complainant, if there is more than one complainant, and the duration and level of control, add to the length of a fit sentence.

[83] Having considered all of the *Tang* factors and the caselaw, considering she is a first-time offender, considering her role in the exploitation and the duration, the sentence for Renee Webber on this count is three years' imprisonment.

Criminal Code Section 286.4 – Advertising Sexual Services

[84] With regards to the conviction in relation to s. 286.4, the advertising of sexual services, I again have considered the facts, the *Tang* factors and the other considerations previously noted. I again have reviewed the caselaw. Given the little involvement the offender had in relation to this offence and the relatively short period of time, four months imprisonment on this count is appropriate.

Criminal Code Section 153 – Sexual Exploitation

[85] There is a legislated mandatory minimum penalty set forth in s. 153(1.1)(a) of the *Criminal Code* for the s. 153(1)(a) offence. This mandatory minimum has been found unconstitutional by the NSCA in *R. v. Hood*, 2018 NSCA 18. I am bound by that decision.

[86] I do not accept the Crown's position that this was a gang rape. But I do agree that this was a serious sexual exploitation of a young person for the sexual gratification of the offender. The offender's participation in this was digital penetration of the complainant, touching of her stomach and breasts, and forcing the complainant's face on the offender's vagina.

[87] I have reviewed the cases provided to me. The range for such offences is incredibly wide, as I noted earlier in my reasons.

[88] Based on those cases and the circumstances before me, a sentence of two years is fit in the circumstances.

***Criminal Code* Section 266 - Assault**

[89] Applying the same principles outlined above, the Crown submits that the sentence for the s. 266 offence should be served consecutively to any other offences for which Ms. Webber was convicted. The assault was not part and parcel of the trafficking offence or the sexual exploitation offence. Rather, Ms. Webber assaulted the 16-year-old victim on a public street months after the victim had stopped being trafficked by Ms. Webber and Mr. Pellow and long after the victim had broken off contact with Ms. Webber.

[90] The Crown asks this Court to find that Ms. Webber's assault on the victim was an act of intimidation meant to silence her and keep her from talking to the authorities about what she and Mr. Pellow had done to her. It had the opposite effect, causing the victim to go to the police, and ultimately led to Ms. Webber's arrest on those charges.

[91] There was little evidence about the assault at the trial, given that the accused pleaded guilty. Therefore, I am unable to conclude on all the evidence that the Crown has proven beyond a reasonable doubt that the slap was a form of intimidation meant to silence the complainant.

[92] I have considered the case law and the appropriate range of sentences and conclude four months imprisonment is appropriate in the circumstances.

In Summary

- Material Benefit, s. 279.02(2) – 18 months imprisonment
- Trafficking, s. 279.011 – three years imprisonment

- Advertising Sexual Services, s. 286.4 – four months imprisonment
- Sexual Exploitation, s. 153(1)(a) – two years imprisonment
- Assault, s. 266 – four months imprisonment

Consecutive/Concurrent and Totality Principles

[93] I now need to consider which sentences should be concurrent and consecutive. The principles are clear. In considering this aspect, I refer to the defence brief, wherein it is stated:

> a) where control and avails of offences are sentenced together in relation to the same complainant, those sentences should be concurrent;
>
> b) where specific acts of control are alleged as supporting separate charges, such as advertising, or violence, those sentences should also be concurrent;
>
> c) gratuitous acts of abuse, including sexual abuse, may be sentenced on the basis of consecutive terms of imprisonment.

[94] The trafficking offences should run concurrently as they arise during the same period of time and involve conduct all in furtherance of trafficking a young person.

[95] I have found the sexual exploitation offence under 153(1)(a) to be a separate offence unconnected to the trafficking offences and not done to exert control over the complainant but for the sexual gratification of the offender. Consequently, the two-year term should run consecutively to the trafficking offences.

[96] The assault is like the sexual exploitation offence in that it is unconnected to the trafficking offence. It is also unconnected in time and it was not committed to further the trafficking offences. The sentence should run concurrently to it.

[97] In considering a total sentence for Renee Webber I have not lost sight of the fact that she is a first offender before the courts. I have considered s. 718.2(d) and (e) of the *Criminal Code*.

[98] The defence has argued selective prosecution, and suggests that other people were involved with the complainant's involvement in the sex trade as well as controlling her, directing her or influencing her in relation to the provision of underage sexual services. The defence argues that the impact upon the complainant of the offender's involvement should be considered through the lens of other contact

the complainant had in relation to underage prostitution. I do not accept those arguments. While this complainant may have been exploited by others, and that may or may not have caused her harm, the fact is that this offender has been convicted of exploiting this young, vulnerable and at-risk youth for financial and sexual gratification. Others may have harmed the complainant along the way, but that does not reduce the sentence that is fit to denounce the conduct of Renee Webber. An offender does not benefit from a reduced sentence because others have contributed to the objectification and exploitation of a victim.

[99] I now turn to the principles of totality. The total sentence now is five years.

[100] I agree and would reduce the sentence for the s. 153(1)(a) offence to one year to acknowledge the principles of totality and in all the circumstances of the offence and the offender.

[101] I sentence Ms. Webber to the following:

- Trafficking s. 279.011 – three years imprisonment
- Material Benefit s. 279.02 – 18 months concurrent
- Advertising Sexual Services s. 286.4 – 4 months concurrent
- Sexual Exploitation s. 153(1)(a) – one year, consecutive
- Assault s. 266 - four months, concurrent to the s. 153 offence

[102] This results in a total sentence of four years.

Ancillary Orders

[103] After the sentencing hearing on December 10 and 11, 2018, the Supreme Court of Canada released its decision in *R. v. Boudreault,* 2018 SCC 58, concerning the constitutionality of victim fine surcharges. The Crown sought victim fines surcharges in this matter. On January 3, 2019, I wrote to counsel to ask for their position concerning the imposition of such fines given the recent decision. The Crown indicated that no victim fine surcharge should be imposed subsequent to the decision date of December 14, 2018. I agree. Consequently, none will be imposed in this matter.

[104] In relation to the order prohibiting communicating pursuant to s. 743.21(1) of the *Criminal Code,* there was an agreement that this would apply to the complainant

and her mother. The disagreement was concerning the complainant's father. Given the convictions, the nature of the exploitation and the effects upon the complainant, while I have not heard from her father, I accept that communications from the offender to the complainant's father would be sufficiently disconcerting for the complainant and should be subject to prohibition.

[105] I also impose the following ancillary orders: section 109(1)(a) firearm/weapon prohibition for 10 years; SOIRA order in relation to s. 279.011, 279.02(2) and 153(1) offences; and, a DNA order for the national databank given that the designated offences are s. 279.011, 279.02 and s. 286.2 and s. 153(1), primary designated offences.

Brothers, J.

APPENDIX "A"

Defence

1. *R. v. Gray*, 2018 NSPC 10;
2. *R. v. Jones*, 2007 NSSC 309;
3. *R. v. Simmons*, 2005 NSCA 39;
4. *R. v. Sampson*, 1994 CarswellNS 169 (NSSC (TD));
5. *R. v. Barton*, 1994 CarswellNS 144 (NSCA);
6. *R. v. Beals*, 1993 CarswellNS 343 (NSSC (TD));
7. *R. v. York*, 1995 CarswellSask 158 (Sask. C.A.);
8. *R. v. Almond*, 2006 BCSC 1706;
9. *R. v. Lukacko*, 2002 CarswellOnt 997 (Ont. C.A.);
10. *R. v. Anthony*, 1995 CarswellAlta 872 (Alta. C.A.);
11. *R. v. N.A.*, 2017 ONCJ 665;
12. *R. v. Samuels*, 2013 ONCA 551;
13. *R. v. Newman*, 2009 NLCA 32;
14. *R. v. S.M.*, 2006 CarswellOnt 1947 (Ont. S.C.J.) ;
15. *R. v. P. (G.E.)*, 2003 CarswellNS 613 (Prov. Ct.);
16. *R. v. Downey*, 1990 CarswellNS 410 (NSSC (AD));
17. *R. v. Safieh*, 2018 ONSC 4468;
18. *R. v. Korof*, 2018 ONCA 757;
19. *R. v. Lucas-Johnson*, 2018 ONSC 4325;
20. *R. v. Ellis*, 2017 ONSC 3812;
21. *R. v. Downey*, 2016 ONCA 19;
22. *R. v. Bloomfield*, 2016 ONCA 447;
23. *R. v. James*, 2014 ABPC 132;
24. *R. v. McPherson*, 2013 ONSC 1635;
25. *R. v. Manulik*, 2012 BCPC 540;
26. *R. v. B. (K.)*, 2004 CarswellOnt 1105 (Ont. C.A.) ;

27. *R. v. Thomas*, 2003 CarswellOnt 6691 (Ont. S.C.J.);
28. *R. v. Brazeau*, 1998 CarswellBC 1883 (BCCA);
29. *R. v. Finestone*, 2017 ONCJ 22;
30. *R. v. Shaw*, 2016 NSSC 292;
31. *R. v. C.G.*, 2002 NSSC 8;
32. *R. v. A.E.*, 2018 ONSC 471;
33. *R. v. Lopez*, 2018 ONSC 4749;
34. *R. v. Alexis-McLymont and Elgin and Hird*, 2018 ONSC 1152;
35. *R. v. Brissett and Francis*, 2018 ONSC 4957;
36. *R. v. R.S.*, 2017 ONCA 141;
37. *R. v. Byron*, 2014 ONSC 990;
38. *R. v. N.J.*, 2017 ONSC 3995;
39. *R. v. Deiaco*, 2017 ONSC 3174;
40. *R. v. D.A.*, 2017 ONSC 3722;
41. *R. v. Moazami*, 2015 BCSC 2055;
42. *R. v. R. (K.R.)*, 2007 CarswellOnt 9901 (Ont.S.C.J.);
43. *R. v. Brun*, 2016 QCCQ 14354;
44. *R. v. Williams*, 1997 CarswellOnt 5783 (Ont. S.C.J.);
45. *R. v. Martinez*, 1995 CarswellNfld (Nfld. S.C. T.D.); and,
46. *R. v. Miller*, 1997 CarswellOnt 3524 (Ont. C.J. – Gen. Div.).

Crown

1. *Canada (Attorney General) v. Bedford*, 2013 SCC 72;
2. *Kienapple v. R.*, [1975] 1 S.C.R. 729;
3. *Phillips v. Nova Scotia* (Commission of Inquiry into the Westray Mine Tragedy), [1995] 2 S.C.R. 97;
4. *R. v. Akapew*, 2009 SKCA 137;
5. *R. v. Alexis-McLymont, Elgin and Hird*, [2018] O.J. No. 1053 (Ont. S.C.J.);

6. *R. v. Barton* (1994), 129 N.S.R. (2d) 395 (NSCA);
7. *R. v. Brown*, 2018 ABQB 469;
8. *R. v. D.A.*, 2017 ONSC 3722;
9. *R. v. Deiaco*, 2017 ONSC 3174;
10. *R. v. EJB*, 2018 ABCA 239;
11. *R. v. E.M.W.*, 2011 NSCA 87;
12. *R. v. Eisen*, 2015 NSCA 65;
13. *R. v. Finestone*, 2017 ONCJ 22;
14. *R. v. Gray*, 2018 NSPC 10;
15. *R. v. Griffiths*, 2015 ONSC 6237;
16. *R. v. Hood*, 2018 NSCA 18;
17. *R. v. Johnas*, 1982 ABCA 331;
18. *R. v. P.K.*, 2012 MBCA 69;
19. *R. v. Landry*, 2016 NSCA 53;
20. *R. v. Latimer*, 2001 SCC 1;
21. *R. v. Lloyd*, 2016 SCC 13;
22. *R. v. Lopez*, 2018 ONSC 4749;
23. *R. v. MacDonald*, 2014 NSCA 102;
24. *R. v. Moazami*, 2015 BCSC 2055;
25. *R. v. Morrisey*, 2000 SCC 39;
26. *R. v. Nur*, 2015 SCC 15;
27. *R. v. Oliver*, 2018 NSSC 230;
28. *R. v. P. (J.)*, ONCA 505;
29. *R. v. Rich*, 2014 BCCA 24;
30. *R. v. M.F.S.*, 2008 ABCA 157;
31. *R. v. S.;* 2016 ONSC 2939;
32. *R. v. R.S.*, 2017 ONCA 141;
33. *R. v. Safieh*, 2018 ONSC 4468;
34. *R. v. Sidhu*, 2011 BCCA 246;

35. *R. v. Skinner*, 2016 NSCA 54;
36. *R. v. W.H.A.*, 2011 NSSC 246;
37. *R. v. J.J.W.*, 2012 NSCA 96;
38. *R. v. West*, 2010 NSCA 16; and,
39. *R. v. Willis*, 2018 NSSC 238.