The Cycle of Sexual Violence: Childhood Sexual Abuse as a Mitigating Factor in the Sentencing of Sexual Offences Against Children Since R v Friesen

KATIE DELAY*

ABSTRACT

In *R v Friesen*, 2020 SCC 9 (*Friesen*), the Supreme Court of Canada noted that childhood sexual abuse renders child victims more likely to, themselves, offend against children. The Court did not provide explicit guidance as to the circumstances in which this cycle of sexual violence can mitigate a sentence. Moreover, the link between childhood sexual abuse and later sexual offending is, often, mediated by other aspects of offenders' identities. This article examines sentencing decisions since *Friesen* wherein offenders convicted of sexual offences against children report an experience of childhood sexual abuse to the court. This article finds that sentencing judges tend to approach offender histories of childhood sexual abuse as (1) a factor that is irrelevant to the determination of fit sentence; (2) a factor that, while relevant to the question of the offender's moral culpability, is insufficiently mitigating as to reduce sentence quantum; or (3) a mitigating factor that attenuates moral culpability through diverse mechanisms and, thereby, reduces sentence quantum. This article suggests that these approaches do not sufficiently maintain predictability in the criminal justice

* Katie Delay is a JD candidate at the University of Victoria, Faculty of Law.

system, nor do they reflect social science understandings of the victim-offender relationship. This article argues that histories of childhood sexual abuse should be contemplated as a mitigating factor only where they are associated with a mental or cognitive limitation that contributed to the offending behaviour.

INTRODUCTION

The Canadian legal community has historically struggled with the existence of child sexual abuse (CSA). Indeed, it was not until the 1980s that sexual offences against children were prosecuted as such.[1] In 1987, Parliament enacted Bill C-15, *An Act to amend the Criminal Code and the Canada Evidence Act*,[2] creating a legislative scheme that, for the first time, specifically criminalized sexual offences against children. Parliament later increased the maximum available sentences for these offences.[3] However, these legislative revisions did little to dismantle the myths about CSA that are pervasive throughout the criminal justice system, including those that minimized its gravity and mischaracterized the blameworthiness of offenders. These myths were especially prolific in the sentencing process, wherein sentencing judges imposed lenient sentences even as appellate courts called for these crimes to be taken seriously.[4]

In *R v Friesen*,[5] the Supreme Court of Canada had the opportunity to define the relevant sentencing principles for sexual offences against

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1 Janine Benedet, "Sentencing for Sexual Offences against Children and Youth: Mandatory Minimums, Proportionality and Unintended Consequences" (2019) 44:2 Queen's LJ 284 at 299; Margaret M Wright, *Judicial Decision Making in Child Sexual Abuse Cases* (Vancouver: UBC Press, 2007) at 9-10.

2 RSC 1985, c 19 (3rd Supp.).

3 *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, SC 2005, c 32 tripled the maximum sentences available for sexual interference, invitation to sexual touching, and sexual exploitation in cases wherein the Crown proceeds summarily from six months to 18 months. Later, the *Tougher Penalties for Child Predators Act*, SC 2015, c 23 increased the maximum sentences available for sexual interference, invitation to sexual touching, sexual exploitation, and sexual assault where the victim is under the age of 16 from 10 to 14 years when prosecuted by indictment and from 18 months to two years less a day when prosecuted by way of summary conviction.

4 Benedet, *supra* note 1 at 288.

5 2020 SCC 9 [*Friesen*].

children. The Court recognized the emotional, psychological, and physical harms that flow from sexual offences against children.[6] The Court noted, in particular, that victimization creates a "cycle of sexual violence" such that victimized children are more likely to, themselves, perpetuate sexual violence against children when they reach adulthood.[7] The sexual victimization of a child is, as such, highly morally blameworthy, and *Friesen* necessitated that courts impose higher sentences in these cases.[8] Notably, the Court maintained that offenders' moral blameworthiness can be mitigated by the nature of their conduct and their personal circumstances.[9] *Friesen* did not, however, provide explicit direction as to whether, and to what extent, the cycle of sexual violence as it is lived by *offenders* implicates moral blameworthiness. Moreover, the relationship between CSA and later sexual offending is, often, mediated by other contextual factors, including mental health or cognitive limitations. This added complexity further complicates the analytical exercise that sentencing judges are called upon to undertake.

I argue that, since *Friesen*, sentencing decisions regarding sexual offences against children reflect highly variable and, often, *ad hoc* analytical approaches to offender histories of CSA. I suggest that three themes arise in the jurisprudence to this regard. An offender's history of CSA tends to be dealt with as: (1) a factor that is irrelevant to the determination of fit sentence; (2) a factor that, while relevant to the question of the offender's moral culpability, is insufficiently mitigating as to reduce sentence quantum; or (3) a mitigating factor that attenuates moral culpability through diverse mechanisms and, thereby, reduces sentence quantum. There is a collective interest, however, in ensuring that the criminal law is "one and the same for all Canadians."[10] Therefore, to satisfy the requisite degree of uniformity in sentencing, courts must develop a consistent methodology by which to approach the issue of offender histories of CSA. I ultimately argue that sentencing judges should contemplate an offender's history of CSA as a mitigating factor only when it is associated with a mental

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6 *Ibid* at paras 65-66.

7 *Ibid* at para 64, citing *R v D(D)*, [2002] CanLII 44915 (Ont CA) at paras 37-38 [*DD*].

8 *Ibid* at paras 75-86.

9 *Ibid* at para 91.

10 *R v Gardiner*, [1982] 2 SCR 368 at 405, 1982 CanLII 30 (SCC) [*Gardiner*].

disorder or cognitive limitation that contributed to the offending behaviour.

My argument proceeds in three parts. In Part I, I discuss the particulars of the Court's decision in *Friesen*. In Part II, I draw on an illustrative sample of decisions to identify analytical trends in how sentencing judges have contemplated offender histories of CSA when assessing the moral blameworthiness of those convicted of sexual offences against children since *Friesen*. Finally, in Part III, I propose an analytical approach to offender histories of CSA that is informed by evolving scientific understandings about the relationship between CSA and later offending behaviour. I turn first to the decision in *Friesen* and the principles it establishes.

I. THE DECISION IN *FRIESEN*

In this part, I provide an overview of the Court's decision in *Friesen*. I detail the circumstances of the offence, Mr. Friesen's personal circumstances, and the procedural history of his case. I summarize the Court's directives with regard to the sentencing of offenders convicted of sexual offences against children. I describe how the Court applied these principles in Mr. Friesen's case. Finally, I suggest that the Court was not sufficiently clear in defining the circumstances in which an offender's history of CSA ought to be contemplated as a mitigating factor and, in turn, when a history of CSA reduces moral culpability to the degree that a lower sentence is justified.

A. *The Circumstances of the Offence and the Offender*

The circumstances that propelled Mr. Friesen's case before the SCC demonstrate the tragedy of CSA. Mr. Friesen pleaded guilty to sexual interference of a four-year-old child ("the victim") and attempted extortion of her mother contrary to ss. 151 and 346(1) of the *Criminal Code*,[11] respectively. After connecting with Mr. Friesen on an online dating website, the mother brought him to her residence, where they engaged in consensual sexual intercourse.[12] Mr. Friesen then instructed the mother to bring her daughter, the victim, into the bedroom, where he repeatedly forced his

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11 RSC 1985, c C-46 [the *Code*].

12 *Friesen*, *supra* note 5 at paras 6-7.

penis into the victim's mouth as her mother held her in place.[13] After the assault, Mr. Friesen threatened to tell people that the mother had sexually abused her other child.[14] The violence with which Mr. Friesen engaged the young victim, as well as the mother's active participation in the assault, rendered this offence especially brutal in nature.

Juxtaposed against his egregious actions are Mr. Friesen's personal circumstances. The fundamental principle of sentencing, proportionality, prescribes that a sentence must be proportionate to the gravity of the offence and the degree of responsibility.[15] Sentencing judges are required to contemplate the character and personal circumstances of the offender. The offender's degree of responsibility is necessarily dictated by their personal circumstances insofar as these circumstances implicate moral culpability and provide insight into the offending behaviour.[16] Thus, the sentencing judge in Mr. Friesen's case, Judge Stewart of the Provincial Court of Manitoba, was statutorily obliged to contemplate Mr. Friesen's personal circumstances irrespective of the seriousness of his offences. At the time of sentencing, Mr. Friesen was 29 years old and had no prior criminal record.[17] Mr. Friesen had a challenging upbringing marked by neglect, as well as by physical and sexual violence.[18] When he left the care of Child and Family Services, he engaged in street-based survival sex work.[19] He reported that the trauma of the sexual abuse he experienced as a child had affected him

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13 *Ibid* at paras 7-9. I note here that the mother had a severe cognitive disability and an IQ of 65. These details, absent from the decision in *Friesen,* were only revealed in an unreported decision of the Manitoba Court of Queen's Bench wherein the mother was sentenced to seven years' imprisonment. See Dean Pritchard, "Mom gets seven years behind bars for abusing two kids" *Winnipeg Free Press* (26 February 2021), online: <www.winnipegfreepress.com/breakingnews/2021/02/26/mom-gets-seven-years-behind-bars-for-abusing-two-kids> [perma.cc/W2GW-GE7S].NULL

14 Mr. Friesen employed distressingly explicit language to describe to the mother what he sought to do to her child, the particulars of which the Court quotes verbatim in its decision (*Ibid* at paras 10-11).

15 The *Code, supra* note 11 at s 718.1.

16 *R v Arcand*, 2010 ABCA 363 at para 60. Notably, however, personal circumstances will not alter the seriousness of the offence in the proportionality calculus (*R v Lacasse,* 2015 SCC 64).

17 *Friesen, supra* note 5 at para 13.

18 *Ibid* at para 14.

19 *Ibid.*

throughout his life, manifesting in bouts of depression and anxiety.[20] Mr. Friesen expressed a desire to pursue professional counselling, and at the sentencing hearing, he stated his remorse.[21] The author of the pre-sentencing report (PSR) concluded, however, that Mr. Friesen had little insight into his offending conduct and, as such, that he was at a high risk to re-offend.[22] These circumstances informed the subsequent sentencing analysis.

B. *The Proceedings Below*

Judge Stewart imposed a six-year sentence for sexual interference and a concurrent six-year sentence for attempted extortion. The sentencing was highly contested, however. The Crown argued that the four to five-year starting point established in *R v Sidwell*[23] applied and sought a sentence of seven years' imprisonment. Defence counsel for Mr. Friesen contended that, while this was a major sexual assault, Mr. Friesen held no position of trust relative to the victim; defence counsel submitted that a total of three years' imprisonment was appropriate.[24] In his reasons, Judge Stewart noted the young age of the victim and Mr. Friesen's decision to involve the mother as aggravating factors.[25] He also acknowledged Mr. Friesen's youth, lack of prior record, and traumatic upbringing.[26] Ultimately, however, he did not find these factors to be sufficiently mitigating given the numerous aggravating factors present in this particular offence and the paramount sentencing objectives of denunciation and protection of children. Indeed, Judge Stewart concluded that Mr. Friesen's case was "one of the worst" he had seen. [27] Mr. Friesen appealed his sentence. Justice LeMaistre of the Manitoba Court of Appeal (MBCA) accepted that Judge Stewart had appropriately weighed the aggravating and mitigating factors, but found that the judge erred in principle insofar as his use of the *Sidwell* starting point presumed the existence of a trust relationship that did not exist between

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20 *Ibid.*

21 *Ibid* at para 15.

22 *Ibid.*

23 2016 MBCA 56 [*Sidwell*].

24 *R v Friesen*, 2018 MBCA 69 at para 19 [*Friesen* (2018)].

25 *Ibid.*

26 *Ibid* at para 17.

27 *Friesen, supra* note 5 at para 19.

Mr. Friesen and the victim.[28] The court reduced Mr. Friesen's sentence to four and a half years' imprisonment for the sexual interference conviction and to eighteen months served concurrently for the attempted extortion conviction.[29] The Crown appealed the MBCA's decision to interfere with the six-year sentence imposed by Judge Stewart for the sexual offence conviction and sought clarity as to how the principles of sentencing apply to sexual offences against children.

C. *A Refined Sentencing Framework for Sexual Offences Against Children*

Mr. Friesen's case presented the Court with an opportunity to develop comprehensive guidance for sentencing judges confronted with sentencing offenders convicted of sexual offences against children. Chief Justice Wagner and Justice Rowe, writing for the Court, noted that, since the 1980s, Parliament has intentionally created and refined a legislative scheme for sexual offences against children that conceptualizes CSA as wrongful because it interferes with the child victim's personal autonomy, bodily and sexual integrity, dignity, and equality.[30] Simultaneously, Canadian society has evolved to reject myths about the nature of CSA that have historically pervaded the legal and medical systems. These include myths that: (i) mischaracterize the harm experienced by child victims, (ii) assert that child sexual abuse is extremely rare, (iii) blame the victim or adults other than the perpetrator, (iv) assert that only a small subset of people sexually abuse children (i.e. "homosexual pedophiles") and (v) assume features of the abuse itself, such as that the child will be injured or complain immediately.[31] Instead, contemporary public attitudes towards CSA demonstrate greater comprehension of the gravity of CSA and its associated impact on the lives of child victims, who, as individuals with little power in society, are the most vulnerable to mistreatment.

In its reasons, the Court vindicated the emotional, psychological, relational, and physical consequences that flow from CSA. Notably, the

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28 *Friesen (2018), supra* note 22 at para 16.

29 *Ibid* at paras 33 and 41.

30 *Friesen, supra* note 5 at paras 53-55.

31 Lisa DeMarni Cromer and Rachel E Goldsmith, "Child Sexual Abuse Myths: Attitudes, Beliefs, and Individual Differences" (2010) 19:6 J Child Sexual Abuse 618.

Court drew on its own jurisprudence in the area of sexual offences against children from the preceding thirty years to illustrate the myriad forms that such harm may take. [32] CSA can, for example, produce feelings of shame, embarrassment, and unresolved anger in child victims that extend into adulthood. CSA can also interfere with healthy emotional and psychosocial development. CSA can undermine trust relationships, especially where the perpetrator is a family member or authority figure, and damage family and community bonds. These harms compound in the lives of children who occupy intersectional identities, including children with disabilities, female children, Indigenous children, and LGBTQ* children, who are disproportionately vulnerable to victimization as a consequence of their particular social marginalization.[33] Notably, the Court also identified profound implications for public safety insofar as it found that "children who are victims of sexual violence may be more likely to engage in sexual violence against children themselves when they reach adulthood."[34] The "cycle of sexual violence," as the Court termed it, normalizes and proliferates CSA within communities and diminishes social morality writ large.[35] The Court was evidently motivated to dismantle the cycle of sexual violence via, in part, the sentencing process. Notably, however, the Court cognized the cycle of sexual violence solely from the perspective of the child victim. The Court did not contemplate the perspective of the offender, who, if we are to accept the cycle of sexual violence as such, may, themselves, have been a victim of CSA. In sum, the Court found that sentencing law as it pertains to sexual offences against children must be sufficiently punitive as to reflect burgeoning sociolegal condemnation of CSA and to redress its harms.

Consequently, the Court advanced a sentencing framework that requires sentencing judges to situate child victims and the harms they suffer as a result of CSA at the centre of the analysis. The sexual violation of a child is inherently wrong precisely because children are particularly vulnerable to victimization and because the consequences of their

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32 *Friesen, supra* note 5 at paras 56-64.

33 *Ibid* at paras 68-73.

34 *Ibid* at para 64, citing *DD* at paras 37-38. The connection between offender histories of CSA and later sexual offending against children is not, perhaps, so linear, however. See my discussion regarding the current status of scientific understanding about this phenomenon in Part III.

35 *Ibid* at para 64.

victimization are so far-reaching.[36] Moreover, offenders are or ought to be aware of the harms that flow from CSA, given growing social recognition. Therefore, when applying the proportionality principle at sentencing, the Court instructs sentencing judges to recognize and give effect to (1) the inherent wrongfulness of these offences, (2) the potential harm to children that flows from these offences, and (3) the actual harm that children suffer as a result of these offences.[37] Thus, while the actual harm that materializes in any given case will vary, sentencing proceeds from the principle that sexual offending against a child is highly morally blameworthy conduct that *could* have far-reaching implications in the lives of its victims. Additionally, courts should assess actual harm in light of the particular vulnerabilities of the victim.[38] In practical effect, sentencing judges should generally impose higher sentences in these cases. While the guidance that the Court provided in this case is intentionally focused on sentencing principles for the offence of sexual interference and closely related offences, including invitation to sexual touching, sexual exploitation, incest, and sexual assault, the Court indicated that these principles can extend to other sexual violence offences and child pornography offences.[39] The decision in *Friesen*, thereby, necessitates that sentencing judges prioritize the principles of denunciation and deterrence and, in turn, impose custodial sentences when sentencing offenders convicted of sexual offences against children.

The Court established an inexhaustive list of factors that sentencing judges ought to contemplate in their analyses. These include whether the offender poses a high risk to reoffend, whether the offender abused a position of trust to commit the offence, whether the offending was committed on multiple occasions or for longer periods of time, whether the child is particularly young, and, finally, the nature and degree of the sexual interference, with attention to the fact that sexual offences encapsulate a wide range of conduct.[40] The Court also reminded sentencing judges that a child's participation or non-resistance should not be confused with *de facto* consent and, as such, cannot be a mitigating factor, especially because participation or non-resistance may be a consequence of the victim having

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36 *Ibid* at para 53.

37 *Ibid* at paras 75-86.

38 *Ibid* at para 72.

39 *Ibid* at paras 44 and 116.

40 *Ibid* at paras 121-153.

been groomed by the offender. The Court did not, however, foreclose an individualized proportionality analysis. In other words, the particular circumstances of the case remain crucial to effectively determine the offender's degree of responsibility and, in turn, a proportionate sentence. Importantly, the Court noted that the "personal circumstances of offenders can have a mitigating effect" on the sentence eventually imposed.[41] The Court suggested that offenders suffering from serious mental disabilities or cognitive limitations, as well as Indigenous offenders who present with the intersecting systemic and background factors discussed in *R v Gladue*[42] and *R v Ipeelee,*[43] may have reduced moral culpability.[44] At this stage in its analysis, the Court did not explicitly indicate whether offenders who, themselves, are victims of the "cycle of sexual violence" should be contemplated as having reduced moral culpability. However, these circumstances do, presumptively, bear on the offender's degree of responsibility given the far-reaching emotional, psychological, and physical dysregulation caused by CSA.

The Court proceeded to apply this sentencing framework to the facts of Mr. Friesen's offence. The Court restored Judge Stewart's six-year sentence, given the ample aggravating factors present in this case.[45] Mr. Friesen's victim was just four years old when she was subject to violent and aggressive oral penetration. Mr. Friesen committed the offence in the victim's home, where the victim should have felt the most safe and secure, and with the coerced participation of her mother, a figure in whom the victim should have been able to trust completely. Ultimately, Mr. Friesen caused ample emotional, psychological, and physical harm to the victim and the mother, as well as damage to this particular family unit and to the extended community. Mr. Friesen also presented to the Court as being at a high risk of reoffending. The Court agreed that Judge Stewart properly identified Mr. Friesen's traumatic childhood, including his experience of sexual abuse, as a mitigating factor because these experiences could "shed some light on his actions."[46] The Court, thereby, implicitly affirmed that the cycle of sexual

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41 *Ibid* at para 91.

42 *R v Gladue*, 1999 CanLII 679 (SCC) [*Gladue*].

43 *R v Ipeelee,* 2012 SCC 13.

44 *Friesen, supra* note 5 at paras 91-92.

45 *Ibid* at para 183.

46 *Ibid* at para 174.

violence ought to be cognized as it is experienced by both victims *and* perpetrators of sexual violence. The Court did not, however, contemplate Mr. Friesen's history of CSA as having any significant mitigating effect on his moral culpability when weighed against the aggravating factors in this case and the primacy of the principles of denunciation and deterrence. Though the Court acknowledged that a history of CSA is relevant to the sentencing analysis, then, the offender's history of CSA in this case did not reduce the total sentence imposed. Therefore, it is unclear from the Court's reasons in *Friesen* the circumstances in which an offender's history of CSA might have a sufficiently mitigating effect on moral culpability so as to warrant a reduction to sentence quantum.

THE JURISPRUDENCE SINCE *FRIESEN*

In this part, I argue that, as a result of the lack of guidance in *Friesen* about when sentencing judges should contemplate offender histories of CSA as a mitigating factor and, in turn, when offender histories of CSA properly justify a sentence reduction, the jurisprudence since *Friesen* reflects inconsistent analytical approaches to this factor. I provide a descriptive account of judgments rendered since *Friesen* wherein offenders who are, themselves, victims of CSA have been convicted of sexual offence(s) against child(ren). I note, however, that the account I provide is not comprehensive. Nevertheless, I draw on cases from provincial and superior court judgments across Canada, as well as appellate court judgments where the appellate court has affirmed or rejected a particular analytical approach. I suggest that three themes arise in these decisions: sentencing judges tend to treat an offender's history of CSA as either (1) a factor that is irrelevant to the determination of a proportionate sentence, (2) a factor that, while relevant to the question of the offender's moral culpability, is insufficiently mitigating as to reduce sentence quantum, or (3) a mitigating factor that attenuates moral culpability to such a degree that it reduces sentence quantum. I discuss each of these themes in turn.

A. *Offender Histories of CSA as Irrelevant to the Determination of a Proportionate Sentence*

Offender histories of CSA are frequently ignored by sentencing judges when determining a proportionate sentence. I identified nine cases in which sentencing judges referred to the offender's CSA in their reasons but

neglected to contemplate how this kind of traumatic experience might implicate the offender's moral culpability in subsequent analysis.[47] For example, in *BN*,[48] the offender pleaded guilty to the offence of exposing his genitals to a person under the age of 16, and was later convicted of sexual assault, sexual touching, and invitation to sexual touching, all perpetrated against the same victim~ his granddaughter. Justice March imposed a global sentence of two years less a day imprisonment.[49] In describing BN's personal circumstances, March J acknowledged that Mr. N was a victim of sexual assault as a youth.[50] March J did not appear to seek further information from Mr. N about the nature and extent of the abuse he suffered, nor did he allude to the implications of this experience of victimization in Mr. N's life. Indeed, Mr. N's experience of victimization was not referenced again in the decision.

Similarly, in *CS*,[51] the offender pleaded guilty to sexual interference after subjecting the victim, the daughter of his long-term partner, to significant abuse over a period of four years, starting when she was seven years old.[52] The PSR described Mr. S's childhood as traumatic and chaotic; Mr. S disclosed that he was sexually abused by his aunt when he was six years old.[53] As in *BN*, Judge Michie did not discuss this disclosure again in her reasons, whether as a mitigating factor or otherwise. Judge Michie imposed a sentence of seven years' imprisonment.[54] In *DCH*,[55] the offender

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47 See *R v BN*, 2024 ONCJ 687 [*BN*]; *R v RO*, 2023 BCCA 65, aff'g *R v RO*, 2021 BCPC 29; *R v JS*, 2023 BCPC 65; *R v RSB*, 2023 BCPC 317; *R v CS*, 2023 NSPC 34 [*CS*]; *R v KR*, 2022 ONCJ 344; *R v Buschemeyer*, 2021 ABQB 1008; *R v DCH*, 2020 ABQB 510 [*DCH*]. and *R v Marsden*, 2020 BCPC 57. In each of these decisions, the sentencing judge flags the fact of the offender's childhood sexual victimization but does not proceed to examine the offender's history of victimization in the sentencing analysis.

48 At the time of sentencing, Mr. N was 77 years old. He had no criminal record, nor had he ever been charged prior to the offences subject to these proceedings (*BN*, *supra* note 47 at para 11).

49 A period of probation and a number of ancillary orders were also imposed on the offender in this case (*BN*, *supra* note 45 at paras 114-115).

50 *Ibid* at para 32.

51 *CS*, *supra* note 47.

52 *Ibid* at paras 6-7.

53 *Ibid* at para 27.

54 *Ibid* at paras 75-77.

55 *DCH*, *supra*, note 47.

pleaded guilty to invitation to sexual touching, as well as making and accessing child pornography. The offender abused the four-year-old victim, his student, under the guise of a piano lesson.[56] Justice Labrenz noted that DCH was sexually abused by a relative for a period of three years, starting when he was 2 years old.[57] Unlike the offenders in *BN* and *CS*, the offender in this case had been diagnosed with pedophilia and, subsequent to that diagnosis, the offender expressed insight into how his own sexual victimization had triggered his offending.[58] In his analysis, Labrenz J acknowledged that DCH has "shown some insight into his offending behaviour,"[59] but, as in *BN* and *CS*, he did not allude to DCH's history of victimization, nor to the ways in which DCH identified this victimization as a trigger for the offending behaviour. Labrenz J eventually imposed a global sentence of four and a half years' imprisonment.[60]

These decisions are emblematic of a trend in sentencing decisions to treat offender histories of CSA as irrelevant to the determination of a proportionate sentence. The Court's reasons in *Friesen*, however, imply that offender experiences of CSA ought to be scrutinized in the sentencing analysis because these experiences may "shed some light" on the offending conduct. Thus, offender histories of CSA will always be relevant to the question of a proportionate sentence for offenders convicted of sexual offences against children. Sentencing judges must, therefore, address these circumstances in their reasons, even if these circumstances do not, eventually, substantiate reduced moral blameworthiness or a discounted sentence. The challenge for sentencing judges is that *Friesen* did not provide clear instruction as to how, exactly, to engage with offender histories of CSA in their analyses. Additionally, the relationship between CSA and later sexual offending is not linear. The absence of treatment in the aforementioned decisions suggests that, without clear instruction, some sentencing judges simply avoid the question of whether the offender's experience of CSA contributed to later offending conduct.

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56 *Ibid* at paras 7-8.

57 *Ibid* at para 30.

58 The offender's self-awareness to this regard was detailed in both his psychiatric report and his PSR (*Ibid* at paras 36 and 47).

59 *Ibid* at para 152.

60 *Ibid* at paras 199-202.

B. *Offender Histories of CSA as Insufficiently Mitigating*

Conversely, many sentencing judges *do* engage with offender histories of CSA in their reasons, but eventually determine either that these circumstances are insufficiently connected to the offending conduct to constitute a mitigating factor or that these circumstances, while mitigating, are not *sufficiently* mitigating when weighed against the aggravating factors in the particular case. I identified four instances in which sentencing judges found that the offender had failed to demonstrate a connection between their own victimization and the offending conduct.[61] I also identified five instances in which sentencing judges identified the offender's victimization as a mitigating factor, but determined that its mitigating effect did not attenuate the offender's moral culpability given the nature and extent of the aggravating factors.[62] I discuss each trend in turn.

When the offender's history of victimization is not sufficiently connected to the offending conduct, sentencing judges tend to find that these circumstances do not constitute a mitigating factor. For example, in *CK*, the offender reported that he was sexually abused by an older cousin when he was five years old.[63] Justice DeWitt-Van Oosten of the British Columbia Court of Appeal held that the offender's history of CSA did not diminish the offender's moral blameworthiness for the offence of sexual interference because there was no evidence that "this single experience, although certainly unacceptable and tragic, normalized sexual abuse for the [offender] in a manner that impacted his ability to appreciate [the harm] his actions might cause."[64] In so making this determination, the court relied on CK's assertion that his experience of abuse was not "overly traumatic."[65] Consequently, the Court of Appeal set aside the conditional sentence imposed by the sentencing judge and, instead, imposed a sentence of three

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61 See *R v CK*, 2023 BCCA 468, varying an unreported decision of the BCPC [*CK*]; *R v Knight*, 2023 BCSC 1748 [*Knight*]; *R v CTP*, 2022 BCPC 185 [*CTP*]; and *R v Mattess*, 2021 BCPC 164 [*Mattess*].

62 See *R v AS*, 2022 MBPC 12 [*AS*]; *R v SADF*, 2021 MBCA 22, varying an unreported decision of the Provincial Court of Manitoba; *R v MRR*, 2021 BCPC 207 [*MRR*]; *R v Lemay*, 2020 ABCA 365, varying an unreported decision of the ABPC [*Lemay*]; and *R v DS*, 2020 MBQB 163.

63 *Ibid* at para 22.

64 *Ibid* at para 88.

65 *Ibid.*

and a half years' imprisonment.[66] Here, to establish a sufficient connection between the history of CSA and the offending conduct, the Court of Appeal required evidence that the offender's experience of victimization normalized sexual violence. In *Knight*, meanwhile, the sentencing judge sought evidence that the offender suffered from a mental disorder that undermined his ability to appreciate the wrongfulness or consequences of his actions.[67] Absent such evidence, the sentencing judge found no connection between the offender's extensive history of CSA and the sexual interference of which he was convicted. Mr. Knight was sentenced to 36 months' imprisonment, less credit for time served.[68] Evidently, then, courts are reluctant to identify an offender's history of CSA as a mitigating factor unless it can be explicitly linked to the offence. Yet the evidence that courts seek to establish such a connection (i.e. evidence of the offender's socialization into particular attitudes or a diagnosed mental disorder) varies from case to case.

There are also several decisions wherein sentencing judges deem the offender's history of CSA a mitigating factor, but where its mitigating effect does not bear on the sentence imposed given the weight ascribed to the aggravating circumstances. This approach aligns with the Court's handling of Mr. Friesen's history of CSA. For example, in *MRR*, an Indigenous offender disclosed a significant history of molestation and sexual assault between the ages of seven and fourteen in his *Gladue* report.[69] However, Judge Giardini declined to reduce MRR's moral culpability for sexual touching and invitation to sexual touching because, as the victim's father figure, MRR occupied a position of trust in his life.[70] Moreover, the victim was just 11 years old at the time the offences occurred.[71] Similarly, in *Lemay*, the sentencing judge ascribed significant mitigating weight to Mr. Lemay's experience of sexual abuse as a child and imposed a net sentence of 17 months' imprisonment.[72] However, the Alberta Court of Appeal (ABCA)

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66 *Ibid* at para 125.

67 *Knight*, *supra* note 61 at paras 60-61.

68 *Ibid* at para 73.

69 *MRR*, *supra* note 62 at paras 22-23.

70 *Ibid* at para 101.

71 *Ibid* at para 6.

72 *Lemay*, *supra* note 62 at paras 12 and 15.

held that these circumstances were not sufficiently mitigating relative to the aggravating factors present in this case.[73] As such, the ABCA increased the global sentence to four years' imprisonment for sexual interference and luring.[74] Moreover, where the offender reports a history of CSA but fails to seek therapeutic treatment for said abuse, courts have indicated reluctance to treat the history of CSA as a mitigating factor.[75] Indeed, in *AS*, Judge Devine went so far as to treat the offender's failure to address his traumatic upbringing as an aggravating factor.[76] The failure to seek treatment can thus counteract the mitigating effect of an experience of CSA.

These decisions suggest that sentencing judges are, often, alive to the possibility that offender histories of CSA may provide insight into offending conduct, per the Court's reasons in *Friesen*. Notably, however, these decisions reveal that courts will not treat offender histories of CSA as a mitigating factor if the offender cannot establish sufficient connection between their own victimization and the offending conduct or if the aggravating factors outweigh the mitigating effect of a history of CSA. It is unclear from these decisions how offenders might demonstrate the requisite degree of connection between their personal circumstances and the offending conduct, nor is it clear what kinds of aggravating factors might negate the mitigating effect of the offender's history of CSA.

C. *Offender Histories of CSA as a Mitigating Factor*

Offender histories of CSA are, most often, treated as a mitigating factor since *Friesen*, but the mechanisms by which sentencing judges determine that these circumstances have had a mitigating effect on the offender's moral culpability are highly variable. I identified four instances in which the sentencing judge concluded that the offender's history of CSA reduced the offender's moral blameworthiness without specifying the means by which this occurred.[77] I identified ten instances in which the sentencing judge concluded that the offender's history of CSA normalized for the offender

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73 *Ibid* at para 35.

74 *Ibid* at para 60.

75 See *R v* MS, 2024 ONSC 2928 [*MS*] and *R v* OA, 2024 ONCJ 541 [*OA*].

76 *AS*, *supra* note 62 at para 61.

77 See *R v BLM*, 2022 BCPC 187 [*BLM*]; *R v Sturgeon*, 2022 ONSC 5218 [*Sturgeon*]; *R v SB*, 2022 ONCJ 536 [*SB*]; and *R v Dichrow*, 2022 ABCA 282, varying 2020 ABPC 224 [*Dichrow*].

distorted sexual attitudes.[78] Finally, I identified five instances in which the sentencing judge concluded that the offender's history of CSA produced mental health challenges that contributed to the offending conduct.[79] In each of these cases, the offender's history of CSA was sufficiently mitigating as to reduce the length of the sentence eventually imposed.

Sentencing judges occasionally rely on the Court's reference to the "cycle of sexual violence" in *Friesen* to ground the presumption that an experience of CSA automatically mitigates an offender's moral blameworthiness for a sexual offence against a child. For example, in *BLM*, Judge Patterson concluded that BLM's moral blameworthiness was lessened because BLM was, himself, the victim of sexual abuse when he was 12 years old.[80] Judge Patterson did not explain why BLM's experience of victimization justified a finding of lessened moral culpability in this case, but nonetheless imposed a conditional sentence of two years less a day, followed by a probationary period of three years.[81] Similarly, in *Sturgeon*,[82] *SB*,[83] and *Dichrow*,[84] the respective sentencing judges contemplated the Indigenous offenders' histories of CSA as a *Gladue* factor and applied this factor to impose a reduced sentence, thereby implying that the offenders' histories of CSA lessened their moral culpability for their respective offences. These latter cases suggest that sentencing judges do not always feel compelled to justify the use of offender histories of CSA as a mitigating factor when these circumstances are contemplated as a *Gladue* factor, because the *Gladue* framework already explains how systemic and background factors implicate offender culpability for Indigenous offenders.

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78 See *R v AR*, 2024 SKKB 90; *R v LC*, 2024 ONSC 5427; *R v DF*, 2024 ONSC 4621; *R v Valiquette*, 2024 ABCJ 217; *R v WDJ*, 2024 ABCJ 119; *R v JY*, 2024 NLSC 179; *R v GJM*, 2023 BCPC 288 [*GJM*]; *R v SE*, 2023 ONSC 6259; *R v BCW*, 2021 BCPC 299 [*BCW*]; and *R v RDS*, 2021 MBQB 264 [*RDS*].

79 See *R v Kavanaugh*, 2023 ONSC 282 [*Kavanaugh*]; *R v WMW*, 2023 ABPC 15 [*WMW*]; *R v Jongsma*, 2021 ONSC 796 [*Jongsma*]; OA, *supra* note 75 at para 205 and MC, *supra* note 78.

80 *BLM*, *supra* note 77 at para 94.

81 *Ibid* at paras 102 and 104.

82 *Sturgeon*, *supra* note 77.

83 *SB*, *supra* note 77.

84 *Dichrow*, *supra* note 77.

Additionally, sentencing judges are likely to contemplate offender histories of CSA as a mitigating factor when the offender can demonstrate that their experience instilled in them distorted attitudes towards sex and sexuality. In *GJM*, for example, the offender was convicted of sexually abusing his half-sister for seven years, from when she was six years old until she was 13.[85] GJM reported having been abused on several occasions by an older cousin when he was 8 years old.[86] Judge Dorey held that GJM's experiences "caused him to develop distorted attitudes and beliefs about sex and power and normalized sexual contact between adults and children."[87] She found that GJM bore a lessened degree of moral culpability for his sexual offending and, therefore, imposed a reduced sentence of two years less a day imprisonment, followed by a three-year probationary period.[88] In *BCW*,[89] a female Indigenous offender sexually abused an eight-year-old girl, also Indigenous.[90] The offender was sexually abused by her maternal uncle between the ages of 6 and 11; she was also sexually assaulted by a 24-year-old man at a party when she was 11 years old.[91] BCW expressed that she learned about sex early and in the context of abuse, which suggested that she perceived sexual violence as normal.[92] Judge Patterson reduced the applicable sentence accordingly.[93] In strikingly similar circumstances, an Indigenous mother received a global sentence of twelve years' imprisonment for participating in the sexual abuse of her four-year-old daughter alongside

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85 *GJM*, *supra* note 78 at paras 10-11.

86 *Ibid* at para 92.

87 *Ibid* at para 125.

88 *Ibid* at paras 128, 162, 168-69. Notably, however, this sentence was increased on appeal to four and a half years' imprisonment for the sexual interference counts and six months' imprisonment for the possession of child pornography count, to be served consecutively, due to an error in principle on different grounds (*R v GJM*, 2024 BCCA 82).

89 BCW, *supra* note 78.

90 The fact that the victim was also an Indigenous girl is significant because Indigenous women and girls are particularly vulnerable to abuse and, as such, sentencing judges must contemplate the abuse of persons who are "Aboriginal and female" as an aggravating factor in their analysis (see the *Code*, *supra* note 11 at s 718.04 and *R v Barton*, 2019 SCC 33).

91 *BCW*, *supra* note 78 at paras 29 and 30.

92 *Ibid* at para 30.

93 *Ibid* at paras 61-65.

her boyfriend.[94] The offender described to her *Gladue* writer several instances of "clear sexual abuse" that took place when she was underage, stating that she "went through puberty [...] and became interested in sexual exploration early."[95] I note here that the language of "clear sexual abuse" is that of Justice Saull, not that of the offender. It is unclear whether the offender characterized these early sexual experiences as abusive to the *Gladue* writer. These statements revealed to Justice Saull that RDS had normalized the experiences of abuse she suffered, and accordingly, Justice Saull contemplated these experiences of abuse as a mitigating factor.

Finally, sentencing judges are likely to contemplate offender histories of CSA as a mitigating factor when they can be linked to mental health conditions that contributed to the commission of the offence. To this purpose, sentencing judges tend to draw on established jurisprudence with regard to mental illness in sentencing, according to which offenders must demonstrate that mental illness played a "central role" in the commission of the offence for mental illness to constitute a mitigating factor.[96] In *Jongsma*,[97] Justice Ducharme crafted an analogous framework by which to assess offender histories of CSA. He held that sentencing judges should contemplate: "a) the nature and duration of the sexual abuse suffered by an accused, b) the nature and duration of the sexual abuse committed, and c) any causal connection that might be drawn to the abuse he had suffered."[98] Ducharme J found that Mr. Jongsma's experience as a victim of sexual abuse constituted a mitigating factor because Mr. Jongsma had developed an addiction to crystal methamphetamine to cope with his abuse; when Mr. Jongsma relapsed, he found himself "re-experiencing" the abuse he suffered, which led him to an internet chatroom where men were sharing child abuse material.[99] In other words, Mr. Jongsma's experience of abuse was causally

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94 *RDS*, *supra* note 78 at para 143.

95 *Ibid* at para 126.

96 *R v Badhesa*, 2019 BCCA 70 at para 44 [*Badhesa*]. See also *R v Fabbro*, 2021 ONCA 494, *R v Okemow*, 2017 MBCA 59, and *R v Dedeckere*, 2017 ONCA 799. A similar standard applies in the context of cognitive and development disability (*R v Scofield*, 2019 BCCA 3 at paras 51 and 56).

97 *Jongsma*, *supra* note 79.

98 *Ibid* at para 42. This approach has not been broadly adopted, though it was cited in OA, *supra* note 75 at paras 200 and 204 and MC, *supra* note 75 at para 45, respectively.

99 *Ibid* at para 57.

linked to his offending behaviour via his substance abuse disorder. Mr. Jongsma received a twelve-month conditional sentence.[100] Similarly, in *Kavanaugh*, the sentencing judge concluded that Mr. Kavanaugh's experience of sexual abuse when he was five years old had a "long-lasting psychological impact" and contributed to his PTSD, anxiety, and depression diagnoses.[101] The sentencing judge held, in turn, that Mr. Kavanaugh's mental health challenges attenuated his degree of responsibility for the luring offences with which he was charged.[102] Thus, where offender histories of CSA are demonstrably connected to a mental health diagnosis, they tend to be contemplated as mitigating.

A REFINED ANALYTICAL APPROACH

In this part, I suggest that offender histories of CSA are always relevant to the question of a proportionate sentence for offenders convicted of sexual offences against children. I propose that, to promote the uniform and scientifically informed application of the sentencing principles in *Friesen*, an offender's history of CSA should be contemplated as a mitigating factor when it can be linked to a mental or cognitive disability that undermined the offender's ability to cognize the wrongfulness of their conduct.

As the Court appreciated in *Friesen*, CSA is associated with severe emotional and psychological harm. Victims of CSA report experiences of guilt, self-blame, shame, and stigma, all of which contribute to poor mental health outcomes.[103] Adult survivors of CSA consistently demonstrate poorer mental health in adulthood than adults who have not experienced CSA. CSA increases the risk of adult-onset of 20 disorders, including mood disorders, anxiety disorders including PTSD, disruptive behaviour

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100 *Ibid* at para 75.

101 *Kavanaugh, supra* note 79 at paras 22 and 23.

102 Consequently, Mr. Kavanaugh was sentenced to 16 months' imprisonment (*Ibid* at para 90).

103 Angie C Kennedy & Kristen A Prock, "'I Still Feel Like I Am Not Normal': A Review of the Role of Stigma and Stigmatization Among Female Survivors of Child Sexual Abuse, Sexual Assault, and Intimate Partner Violence" (2018) 19:5 Trauma, Violence & Abuse 512 at 515. See also Judith Lewis Herman, *Trauma and Recovery* (New York: Basic Books, 1992) and Judith Lewis Herman, *Truth and Repair: How Trauma Survivors Envision Justice* (New York: Basic Books, 2023).

disorders, and substance abuse disorders. Interestingly, the age of onset of the abuse, the duration and severity of the abuse, and peer perpetration of abuse have been found to predict the severity of the mental health outcome in any particular case.[104] Similarly, child survivors of CSA express higher rates of personality disorders, anxiety disorders, and major affective disorders.[105] When their abuser was situated in a position of authority or trust, as is often the case, CSA survivors also report difficulty developing and maintaining relationships later in life.[106] Finally, CSA survivors demonstrate higher rates of risk-taking behaviours relative to the general population.[107] In sum, it is clear that CSA can alter neurodevelopment, dysregulate affect and relational attachments, and contribute to the development of maladaptive interpersonal and coping skills. However, the context in which CSA occurs and other aspects of victims' identities can militate how its impact is experienced.

Importantly, the "cycle of sexual violence" identified in *Friesen* is not so clearly defined. The "sexually-abused-sexual abuser hypothesis," as it is termed in social science literature, states that there is a specific relationship between sexual abuse history and sexual offending, such that individuals who experience sexual abuse are significantly more likely to later engage in sexual offences.[108] The essence of this hypothesis has been parroted across the jurisprudence pertaining to sexual offences against children since the

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104 Jan Coles et al, "Childhood Sexual Abuse and its Association with Adult Physical and Mental Health: Results from a National Cohort of Young Australian Women" (2015) 30:11 J Interpersonal Violence 1929 at 1930-1931.

105 Josie Sparato et al, "Impact of child sexual abuse on mental health: Prospective study in males and females" (2004) 184 British J Psychiatry 416 at 418-419. See also Terri Lewis et al, "Does the impact of child sexual abuse differ from maltreated but non-sexually abused children? A prospective examination of the impact of child sexual abuse on internalizing and externalizing behaviour problems" (2016) 51 Child Abuse & Neglect 31 at 38.

106 Mollee Steely Smith, "'I'm Not a Child Molester, but a Victim Myself': Examining Rationalizations Among Male Sex Offenders who Report Histories of Childhood Sexual Abuse" (2023) 67:12 Int J Offender Therapy and Comparative Criminology 1254 at 1255. See also Kennedy & Prock, *supra* note 103 at 515.

107 Coles et al, *supra* note 104 at 1930.

108 See Wesley G Jennings & Caitlyn Meade, "Victim–offender overlap among sex offenders" in Teela Sanders, ed, *The Oxford Handbook of Sex Offences and Sex Offenders* (Oxford: Oxford University Press, 2017) at 183.

early 1990s,[109] but, in fact, the causal connection between CSA and later sexual offending is tenuous at best. A meta-analysis of seventeen studies involving sex offenders and non-sex offenders revealed a higher prevalence of sexual abuse history among adult sex offenders than among non-sex offenders, as well as a significantly lower prevalence of sexual abuse history among those who offended against adults compared to those who offended against children.[110] Similarly, a study of sex offenders in Québec revealed that 41% of the offenders were victims of sexual assault or contact as children.[111] Thus, while there is some evidence to support an *association* between CSA and later offending, an explicitly *causal* relationship between childhood sexual victimization *qua* victimization and later offending behaviour against children is yet to be established. Indeed, the "large majority of sexually abused children do not go on to offend."[112] Rather, victims of CSA are simply *over-represented* in offender populations. There are two possible explanations for this association. First, victims of CSA may learn to imitate the perpetrator's abusive behaviour and, through their victimization, learn to conceptualize adult-child sexual contact as both appropriate and acceptable.[113] Alternatively, CSA may impact subsequent psychosexual development by triggering the onset of a mental disorder that exacerbates emotional and psychological dysregulation, undermines impulse control, and facilitates risk-taking behaviours.[114] These explanations each hinge on a mediating pathway between CSA and later offending, whether developmental or psychological.

It follows that sentencing judges ought to be alive to the mediating developmental and psychological pathways by which an offender's history of CSA may have contributed to the offending behaviour. This is because a

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109 See, for example, *R v McGraw*, 1991 CanLII 29 (SCC), *DD, supra* note 7, and *R v Woodward*, 2011 ONCA 610.

110 Ashley F Jespersen, Martin L Lalumière & Michael C. Seto, "Sexual abuse history among adult sex offenders and non-sex offenders: A meta-analysis" (2009) 33:3 Child Abuse & Neglect 179 at 183-186.

111 Joanna Amirault & Eric Beauregard, "The Impact of Aggravating and Mitigating Factors on the Sentence Severity of Sex Offenders: An Exploration and Comparison of Differences Between Offending Groups" (2012) 25:1 Crim J Pol Rev 78 at 85.

112 *Ibid* at 190.

113 *Ibid* at 188.

114 Kennedy & Prock, *supra* note 103 at 521.

sentence must be proportionate to the offender's degree of responsibility.[115] An offender's history of CSA has the *potential* to bear on their degree of responsibility. As such, the instances described above in which a sentencing judge noted the offender's history of CSA but did not proceed to evaluate whether that experience contributed to the offending behaviour demonstrate *de facto* errors in principle. However, the circumstances of the offender are only mitigating where they "reduce the degree of culpability" of the offender.[116] Therefore, sentencing judges cannot apply an automatic sentence deduction simply because an offender demonstrates a history of CSA, because CSA does not necessarily or presumptively *cause* later sexual offending. The decisions discussed above, wherein sentencing judges concluded that the offender had reduced moral blameworthiness on the basis of the offender's victimization in itself, also reflect an error in principle.

Instead, to accord with contemporary scientific understandings of the consequences that flow from CSA, sentencing judges ought to examine whether the offender's history of CSA contributed to the development of a mental or cognitive disability. Once the sentencing judge establishes that this is the case, via the testimony of expert witnesses or the introduction of a *Gladue*, pre-sentencing, or psychiatric report, the sentencing judge should go on to evaluate whether the mental or cognitive disability played a central role in the commission of the offence, per the guidance developed by various appellate courts.[117] This analysis should be conducted with the understanding that mental, cognitive, and developmental disabilities can render risk-taking and impulsive behaviours more likely. In other words, it is unlikely that an experience of CSA will, in itself, undermine the offender's appreciation of the wrongfulness of sexual offences against children, but instead that mental disorder or cognitive limitation will facilitate a kind of rationalization of morally blameworthy conduct. An

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115 See the *Code*, *supra* note 11 at s 718.1 and *Lacasse*, *supra* note 16.

116 Wright, *supra* note 1 at 66.

117 See *Badhesa*, *supra* note 96 at para 44, *Scofield*, *supra* note 96 at paras 51 and 56, *Dedeckere*, *supra* note 96 at para 14, *Fabbro*, *supra* note 96 at para 26 and *Okemow*, *supra* note 96 at para 73.

offender may, for example, explain the offending behaviour as a means by which to make sense of their own abuse[118] or as a response to a trigger.[119]

The Court in *Friesen* highlighted the fundamental importance of uniform application of the law of sentencing. Indeed, procedural fairness in the Canadian criminal justice system is premised on the notion that the criminal law is "one and the same for all Canadians."[120] At present, however, the jurisprudence reflects inconsistent analytical approaches to whether and, in turn, how offender histories of CSA factor into the question of a proportionate sentence. These inconsistencies undermine the goal of uniform application of the criminal law and render sentencing decisions unpredictable. Moreover, CSA often goes undisclosed due to the stigma and shame associated with experiences of traumatic sexualization, especially for men who were abused as young boys.[121] The act of disclosure, even to a *Gladue* or PSR author or psychiatrist, is highly vulnerable. It is crucial that, should offenders disclose these experiences to criminal justice system actors, they have a clear sense of how, exactly, this information will be used in the criminal proceedings against them.

CONCLUDING THOUGHTS

The Court's decision in *Friesen* reflects a marked shift in societal attitudes towards CSA and an important step towards securing justice for child victims and adult survivors alike. The Court did not, however, provide clear guidance for sentencing judges confronted with circumstances in which an offender reports an experience of CSA, which renders the sentencing process uncertain and unpredictable. I proposed that offender histories of CSA are best contemplated as a mitigating factor where these circumstances can be linked to a mental or cognitive disability. In this way, sentencing law would better reflect scientific understanding of the mechanisms by which experiences of CSA contribute to offending behaviour and sentencing judges in these cases would be better positioned

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118 See *Jongsma, supra* note 79.

119 See *WMW, supra* note 79.

120 *Gardiner, supra* note 10 at 405.

121 Gisela Priebe & Carl Göran Svedin, "Child sexual abuse is largely hidden from the adult society: An epidemiological study of adolescents' disclosures" (2008) 32:1 Child Abuse & Neglect 1095 at 1098.

to impose sentences in accordance with the fundamental principle of sentencing—proportionality.