

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Vannoordennen, 2026 ONCA 236¹

DATE: 20260401

DOCKET: COA-24-CR-0433

Trotter, Dawe and Wilson JJ.A.

BETWEEN

His Majesty the King

Respondent

and

John Vannoordennen

Appellant

Paul Socka, for the appellant

Ryan Mullins, for the respondent

Heard: January 26, 2026

On appeal from the convictions entered by Justice Helen A. Rady of the Superior Court of Justice on June 22, 2023, and from the sentence imposed on August 15, 2024.

Trotter J.A.:

A. INTRODUCTION AND FACTUAL OVERVIEW

[1] The appellant was convicted of two counts each of sexual interference (*Criminal Code*, R.S.C. 1985, c. C-46, s. 151), sexual assault (s. 271), and making

¹ This appeal is subject to a publication ban pursuant to s. 486.4 of the *Criminal Code*, R.S.C. 1985, c. C-46.

child pornography² (s. 163.1(2)), as well as single counts of invitation to sexual touching (s. 152) and sexual exploitation (s. 153(1)(a)). He was sentenced to 11 years' imprisonment.³ He appeals his convictions and sentence.

[2] The complainants, J.H. and I.H., are brothers. The appellant had business dealings with their father in the early 2000s and became a close family friend. He assisted the complainants' father with his business, and became a trusted confidant of their mother. He was much older than the complainants; he was like a big brother or an uncle to them. He taught them how to drive and helped find them jobs. He spent a lot of time with them. Over time, he would introduce them to alcohol. Eventually he sexually abused both boys, but not during the same time period.

[3] The appellant had a limousine business. He picked up clients from Detroit and drove them across the border to the Windsor Casino. Both brothers would separately accompany the appellant on these trips, with their parents' permission.

[4] The appellant's relationship with the complainants' parents ended in 2018, a year after they separated.

² As a result of *An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material)*, S.C. 2024, c. 23, the term "child pornography" was replaced with "child sexual abuse and exploitation material" in the *Criminal Code*. I use the former terminology only because these amendments came into force after the appellant's convictions.

³ As I will discuss later, due to an arithmetic error the appellant's total sentence was erroneously recorded as 12 years' imprisonment.

[5] The offences against J.H. occurred between 2001 and 2009. J.H. testified that he was in grade five or six when he met the appellant. He viewed the appellant as a family friend or a big brother and regularly spent time with him. He began doing odd jobs for the appellant, such as cutting his grass, cleaning his office, helping to set up booths at wedding shows (to promote the limousine business), and cleaning his limousine. They sometimes attended movies together.

[6] J.H. testified that the sexual abuse started when he was in grade six or seven and continued into high school, when he was between the ages of 14 and 18. It first involved the appellant masturbating in front of him and progressed to mutual touching and oral sex. This often occurred in the appellant's limousine. It also happened at the home of the appellant's parents (when he lived with them), at apartments where the appellant lived over the years, in an apartment attached to a music studio belonging to the appellant's friend, and at J.H.'s house when his parents were not there. They once had sexual contact by the side of a country road during a drive in the appellant's minivan. J.H. testified that the appellant took nude photographs of him, although he was uncertain how many times, and whether he had actually seen the photographs before testifying. The appellant also attempted anal intercourse with J.H.

[7] J.H. did not see the appellant as frequently after he graduated from high school; however, they stayed in touch. J.H. sought therapy for anxiety. When he

told the appellant he was going to do so, the appellant told him: "Do not reveal your deepest and darkest secrets". In cross-examination, J.H. acknowledged the appellant may have been joking at the time.

[8] In therapy, J.H. originally denied that he had been sexually abused. However, he disclosed the abuse to his girlfriend, who encouraged him to tell his mother, who in turn told him to report the matter to the police. J.H. spoke to his brother, I.H., and learned that similar things happened to him.

[9] I.H., who is eight years younger than his brother, described a similar pattern of abuse occurring when he was in high school, between 2014 and 2018. He considered the appellant to be his friend. He accompanied the appellant when he did border runs between Windsor and Detroit. They went to movies together. He said that the sexual abuse started when he was 15 or 16 years old. The first time it happened was in a casino hotel room when his parents were away. I.H. and the appellant agreed to tell his parents that they had gone to see a movie instead.

[10] I.H. described many other instances of sexual contact between them, involving touching each other's penises and mutual oral sex. I.H. also described sexual touching occurring when he went on border runs with the appellant. He testified it occurred more than 10 or 20 times at the appellant's home, when his mother was not there. In total, he estimated that there were more than 50 sexual encounters when he was between the ages of 15-18. The appellant also took nude

photographs of I.H., and photographs of their penises touching, which were discovered when the police searched the appellant's electronic devices. I.H. acknowledged that he had access to the appellant's computer.

[11] I.H. also described the time that his brother asked him whether anything had happened with the appellant. He said that they did not discuss the details of the abuse, but he believed that they talked about going to the police.

[12] The appellant testified and denied all allegations. He acknowledged being a close family friend and that he enjoyed a position of trust within the family. He agreed that J.H. and I.H. considered him to be a big brother or uncle-type person.

[13] The dominant theme in the appellant's testimony was that the allegations against him were fabricated. He attributed various motives to the complainants. He believed that the images that were found on his computer were put there by somebody else, likely the complainants, who had access to his home computer. He speculated that the brothers had been in contact with a child predator vigilante who had accused the appellant of being a pedophile.

[14] The appellant remembered speaking with J.H. about going to therapy. He said that his "deepest and darkest secrets" comment was taken out of context and had no sinister connotation.

[15] The trial judge found the appellant guilty on all counts. I will discuss her reasons for judgment in the next section.

B. THE APPEAL AGAINST CONVICTION

(1) Introduction

[16] The appellant raises three issues in relation to his convictions. He submits that the trial judge: (a) misapprehended aspects of the appellant's evidence; (b) erred by overemphasizing the respective demeanours of J.H. and the appellant; and (c) relied on erroneous considerations to enhance the credibility of J.H. and I.H.

[17] The trial judge summarized the relevant evidence adduced at trial, principally focusing on the testimony of the complainants and the appellant. She also addressed the evidence of the complainants' mother, who testified about how the matter came to light. The trial judge reviewed the evidence of a police expert concerning the extraction of the photographs from the appellant's electronic devices. The trial judge understood that the appellant challenged the integrity of those photographs; he suggested that I.H. put the images on his computer.

[18] In the course of her reasons, the trial judge made some general observations about the evidence of the principal witnesses. For instance, she noted that the appellant was highly critical of the complainants, particularly J.H., and their parents.

[19] There were internal inconsistencies in the evidence of both complainants in terms of what they each initially reported to the police. Nonetheless, the trial judge

accepted their testimony. She found certain aspects of J.H.'s evidence compelling. He was very specific about what parts of his body the appellant ejaculated on and why. J.H. would take a shower afterwards and, because he wished to keep it a secret from his parents, he would wait for his hair to dry before returning home. He expressed fears about his own sexuality, which the trial judge said was "something a boy of his age could well be uncomfortable about."

[20] The trial judge found that I.H. gave his evidence in a straightforward manner. She noted that I.H. was "candid to admit that his memory is spotty at times, although he said it had improved during counselling. He readily admitted that he had abused Wellbutrin in the past."

[21] The trial judge also made the following important findings. First, she could find no reason to conclude that the brothers colluded. She accepted that they did not discuss the details of their experiences with one another, nor did they share any details with their parents, who had trouble getting information from them.

[22] Second, the trial judge rejected the appellant's evidence that he was framed by J.H. for vindictive reasons.

[23] Third, she found that both complainants knew of the child predator vigilante who was in contact with the appellant. However, she found there was "no evidence that they interacted with [him] or were motivated by him to lie."

(2) Misapprehension of the Appellant's Evidence

[24] The trial judge disbelieved the appellant's evidence. The appellant submits that the trial judge misapprehended his evidence in an important way. Specifically, he argues that the trial judge misinterpreted the appellant's evidence relating to how often he was alone with either of the brothers. The trial judge made the following observations about his evidence:

He adamantly denied the allegations. Early in his examination-in-chief, he categorically denied being alone with either of the boys. He said that his parents or [the complainants' mother or father] were always at the wedding shows. He said that his mother was always present or nearby at the Emeryville home. He denied being alone with [I.H.] in his bedroom.

He testified that there were always people at the music studio 24/7.

...

He said he was never alone in his Langlois apartment with [I.H.].

...

He denied being alone with [I.H.] at the casino at any time. He did volunteer that [I.H.] came to a room at the casino with him on one occasion, and he remembered one other time when he arranged for a room for [J.H.] and his girlfriend, but in fact [J.H.] was there with friends and there was drugs and alcohol.

[25] The appellant focuses on the following passage, in which the trial judge said:

Ultimately, the accused conceded that he was alone with [J.H. and I.H.] at times when in the car. However, he

denied that there was any sexual activity there at any time.

He had to concede on occasion he had been alone with [I.H.] at his Emeryville home. [Emphasis added.]

[26] The appellant submits that the trial judge erred in her understanding of the appellant's evidence in which he always acknowledged that he spent time alone with the complainants. I do not agree.

[27] Early on in his examination-in-chief, the appellant was emphatic that he was not alone with the brothers. He made a point of explaining that their parents or other people were present when he was with them. But as his evidence progressed, it became more nuanced. Given the nature of the relationship he described with the family, it stood to reason that there would be times when he would be alone with the complainants.

[28] In the passage reproduced in para. 25 above, the trial judge cited two examples when the appellant acknowledged situations in which he would be alone with either J.H. or I.H. I accept that the trial judge's expressions – "ultimately" and "had to concede" – may have signaled a shift in the appellant's evidence that was more dramatic than borne out in the transcript. However, I do not view this as consequential. It does not reflect a misapprehension of the appellant's evidence, and certainly not one that left the verdicts on unsteady ground: *R. v. B.W.*, 2024 ONCA 412, 438 C.C.C. (3d) 241, at para. 56. The trial judge made it perfectly clear

that she accepted the complainants' evidence and that she disbelieved the appellant's testimony, which did not raise a reasonable doubt.

[29] I would not give effect to this ground of appeal.

(3) Demeanour

[30] The appellant submits that the trial judge relied unduly on her assessment of the relative demeanours of J.H. and the appellant. With respect to J.H., she said: "He became very emotional toward the end of his testimony in that he knew that the accused was never his friend. His emotions struck me as genuine." She further said:

[J.H.] struck me as sad, and not angry, malicious or vindictive. He did not denigrate the accused. Indeed, he expressed sadness or empathy for the accused during the course of his police interview.

[31] Later in her reasons, the trial judge said the following about the appellant's evidence:

In contrast to [J.H.] and [I.H.], the accused was harshly critical of [J.H.] in particular. He referred to [the complainants and their parents] as a screwed-up family and that [I.H.] was passed off on him. He said that [J.H.] manufactured the allegations as a way to get even with him. It is not clear to me for what. He was going through deep things and was plotting. He had ulterior motives. He testified that [J.H.] can burn in hell for what he has done.

He called [J.H.] the best liar in the industry when he was shown the statement given by [J.H.] in which he expressed sympathy or sadness for the accused.

[32] It would appear that this comparison of J.H. and the appellant was instigated by the Crown's cross-examination of the appellant. The Crown played J.H.'s police statement during her questioning and asked the appellant to comment on whether J.H. appeared to be sympathetic toward him. The appellant answered that he thought J.H. was "putting a good show on, which is what he does. He does sound sympathetic, I'll give you that."

[33] I agree with Mr. Socka for the appellant, that this line of questioning was improper. The Crown is not permitted to call upon an accused person to comment on the credibility of their accuser(s): *R. v. D.M.*, 2022 ONCA 429, 162 O.R. (3d) 444, at paras. 68-69; *R. v. G.H.*, 2020 ONCA 1, 61 C.R. (7th) 365, at paras. 24-25. One of the main reasons for this rule is that it tends to shift the burden of proof to the accused person and undermines the presumption of innocence. It was open to the Crown to make submissions to the trial judge about whether J.H. appeared sympathetic or compassionate in relation to the appellant, but the appellant's opinion on it was not probative of anything.

[34] However, the complaint in this case is not focused on the Crown's line of questioning in this judge alone trial; it is about the trial judge's use of the demeanour evidence that developed through the course of the trial.

[35] The demeanour of a witness is a permissible consideration in the assessment of credibility. The fault line occurs at the point where a trial judge

places undue reliance on this factor: *R. v. Hemsworth*, 2016 ONCA 85, 334 C.C.C. (3d) 534, at paras. 44-45. That did not occur in this case. As in *R. v. J.L.*, 2022 ONCA 271, at para. 6, while the trial judge may have given more consideration to demeanour than is “optimal”, she did not err by giving it undue weight.

[36] Defence counsel at trial acknowledged that both complainants were “earnest” witnesses. She cautioned the trial judge against allowing demeanour to take on undue significance. Therefore, the trial judge was well aware of the proper approach. That she did so is evidenced by the multiple reasons that she gave for accepting the evidence of J.H., and the various reasons offered for rejecting the appellant’s evidence. I would also add that the trial judge’s description of J.H.’s demeanour was appropriate, given the appellant’s position at trial that the allegations were fabricated and motivated by some unidentified animosity toward him.

[37] I would dismiss this ground of appeal.

(4) Erroneous Considerations

[38] The appellant submits that the trial judge relied on improper considerations in assessing the evidence of both complainants: lack of embellishment in their testimony and using the fact that they both sought counselling as oath-helping.

Lack of Embellishment

[39] The trial judge mentioned lack of embellishment in relation to both complainants. With respect to J.H., she said:

[J.H.] gave his evidence in a straightforward way, recounting details of sexual encounters he had with the accused starting when he was in grade six or seven and which continued while [he] was in high school. He was candid about his drug and alcohol abuse. I did not sense that he embellished or overstated his evidence. He did not exaggerate the number of encounters he and the accused had. For example, he did not testify that sexual contact occurred on every occasion that they were together. He was candid to say in examination in-chief that he could not remember the very first time, although in cross-examination he said he believed it had occurred in the limousine. He similarly testified that the accused took photographs of him, but he did not exaggerate how often. A handful of times, he said. [Emphasis added.]

[40] As for I.H., the trial judge said he “also gave his evidence in a straightforward way. Like his brother, he did not exaggerate or embellish the number or detail of his encounters with the accused.”

[41] These types of references can sometimes be problematic. As the Supreme Court of Canada said in *R. v. Gerrard*, 2022 SCC 13, [2022] 1 S.C.R. 279, at para. 5:

[L]ack of embellishment is not an indicator that a witness is more likely telling the truth because both truthful and dishonest accounts can be free of exaggeration or embellishment. Lack of embellishment cannot be used to bolster the complainant’s credibility — it simply does not

weigh against it. It may, however, be considered as a factor in assessing whether or not the witness had a motive to lie.

[42] In *R. v. Kiss*, 2018 ONCA 184, Paciocco J.A. held, at para. 53:

[T]here is nothing wrong with a trial judge noting that things that might have diminished credibility are absent. As long as it is not being used as a makeweight in favour of credibility, it is no more inappropriate to note that a witness has not embellished their evidence than it is to observe that there have been no material inconsistencies in a witness' evidence, or that the evidence stood up to cross-examination.

[43] The trial judge's references to lack of embellishment were appropriate and consistent with the approach in *Kiss*. She made general observations about the evidence of both complainants. Reading her reasons as a whole, she did not cross the line and use this factor as a makeweight in favour of credibility. Moreover, at trial, the appellant alleged that both complainants had various motives to lie and that the allegations were fabricated. As *Gerrard* makes clear, lack of embellishment may be relevant to this issue. It would have been better had the trial judge made an explicit link between these two factors. Nonetheless, trial judges are presumed to know the laws of evidence. I am not persuaded that she erred in relying on this factor.

Counselling as Oath-Helping

[44] The appellant submits that the trial judge erred in relying on the fact that both complainants attended counselling as a result of the appellant's offending against them. Near the end of her reasons, the trial judge said the following:

Both men have received counselling. Their mother confirmed this, and clearly the accused was aware that [J.H.] was seeing [J.H.'s psychiatrist]. It is difficult to understand why they would seek counselling without a compelling reason.

[45] The appellant submits that reliance on the counselling evidence amounted to improper oath-helping. The Crown submits that the use of this evidence was appropriate, and in line with this court's decision in *R. v. A.J.K.*, 2022 ONCA 487, 162 O.R. (3d) 721, at para. 43, in which Fairburn A.C.J.O. said: "a complainant's emotional disintegration after an alleged offence may well be relevant to whether, as a matter of common sense and human experience, the events occurred as described by the complainant."

[46] The Crown acknowledges that, while attendance at counselling in the present case does not amount to evidence of "emotional disintegration", "common sense and human experience permit an inference that counselling was undertaken to address a traumatic experience, such as the confusion, depression and guilt that the victims said resulted from the [a]ppellant's abuse."

[47] In evaluating this issue, I note that there was a good deal of evidence about the complainants' attendance at counselling. They both explained why they sought counselling. They claimed that it was related to their experiences with the appellant. No objection was taken by the appellant's trial counsel to the admission of this evidence. It was relevant to the narrative of events. And I would note that the Crown did not ask the trial judge to draw the inference that seeking counselling enhanced the credibility of the complainants.

[48] I agree with the appellant that the situation in this case was much different than in *A.J.K.* The concern is that the trial judge reasoned that, because the brothers went to counselling, it must be true that the appellant abused them. Although I am concerned with the trial judge's use of this evidence without any further explanation, this was only one factor that she relied upon in her assessment of the credibility of each of the complainants. It was unnecessary and added nothing to her assessment of their evidence. The trial judge would have reached the same conclusions about the respective credibility of the complainants in any event: see *R. v. Santhosh*, 2016 ONCA 731, 342 C.C.C. (3d) 41, at para. 55; *A.J.K.*, at para. 42.

[49] I would dismiss this ground of appeal.

C. THE APPEAL AGAINST SENTENCE

(1) Introduction

[50] As noted at the beginning of these reasons, the trial judge imposed a global sentence of 11 years' imprisonment. As I will discuss, while at one point in her oral reasons the trial judge stated that she was imposing a global sentence of 12 years' imprisonment, the sentences she imposed on the individual counts combine to produce a total sentence of 11 years' imprisonment. She also made other ancillary orders, including an order under s. 161(1)(d) of the *Criminal Code*, prohibiting the appellant from using the internet for 20 years, without any exceptions.

[51] The appellant submits that the custodial sentence was demonstrably unfit and that the s. 161(1)(d) order was unwarranted, especially in view of the fact that the Crown did not request the order and the trial judge imposed it without hearing any submissions on the issue.

[52] The Crown submits that the custodial sentence was fit. The Crown takes the position that the s. 161(1)(d) order was appropriate, but that it should be amended to include tailored exceptions.

(2) Sentencing Proceedings

[53] By the time of the sentencing hearing, the appellant was self-represented. He was 57 years old and a first-time offender. He reported being sexually abused when he was a teenager, leading to past struggles with alcohol.

[54] The appellant has been gainfully involved in various business pursuits over the years. He cares for his elderly mother, with whom he shares a very close

relationship. The author of the Pre-Sentence Report noted that the appellant was without remorse and engaged in “victim blaming”. He identified a new motive to fabricate, claiming that he had been set up in retaliation for refusing to offer one of the complainants employment.

[55] The Victim Impact Statements of J.H. and I.H. were filed at the sentencing hearing. Collectively, they convey the devastating impact of the appellant’s offending on the entire family. I.H. reported being impacted emotionally, physically, economically, and in terms of his personal security. J.H. said that the appellant’s actions have impacted on all of his important relationships. He turned to alcohol and drugs to cope.

[56] The Crown requested a global sentence of 20 years’ imprisonment which, after applying the principle of totality, would amount to a sentence of 14 years’ imprisonment. The appellant’s position on sentencing was a plea for leniency and a non-custodial sentence, one that would allow him to continue to care for his mother.

[57] The trial judge commenced her analysis by acknowledging that *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, is “the touchstone for determining the appropriate penalty for those who hurt our most precious and vulnerable persons.” She quoted from that decision, stressing the serious damage and long-term harm suffered by victims of child sexual abuse. The trial judge further noted

“the Supreme Court’s direction that sentences for child sexual abuse must increase”.

[58] The trial judge noted the mitigating factors set out above, as well as the numerous aggravating factors in this case. She said that the appellant’s “offences constitute a breach of trust, attracting a high degree of moral blameworthiness.” She further noted that the appellant groomed each of the brothers. The trial judge found the appellant’s lack of remorse and his victim-blaming to be “disturbing”, but she made it clear that “it is absolutely not an aggravating factor.”

[59] The trial judge calculated the sentence in the following manner:

I agree with the Crown that the sexual interference offences require consecutive sentences pursuant to s. 718.3(7) of the *Criminal Code*. There is no close temporal nexus between the abuse of [J.H.] and the abuse of [I.H.]. It appears that once [J.H.] turned 14 or so, the abuse stopped, but began with [I.H.]. The abuse was repetitive and lasted for many years.

She concluded that a sentence of six years was appropriate on the sexual interference counts pertaining to I.H. and J.H., to be served consecutively to each other.

[60] On the child pornography counts, the trial judge held: “A sentence of one year for each is imposed, to be served concurrently to each other and consecutively to the other offences, consistent with s. 718.3(7)(a) of the *Code*.”

[61] The trial judge held that this resulted in a sentence of 14 years' imprisonment, which she said she was reducing to 12 years to account for totality. Accordingly, she reduced the sentences on the sexual interference counts to five years each, consecutive to each other. However, because the trial judge made the one-year sentences on the child pornography counts concurrent to one another, but consecutive to the sentences on the sexual interference counts, the appellant's net sentence would actually have been 13 years' imprisonment, and was reduced to 11 years' imprisonment when the trial judge reduced the sentences on the sexual interference counts from six to five years. The trial judge also made an order under s. 161 for 20 years.

(3) Discussion

[62] As noted above, the appellant submits that the custodial portion of the sentence imposed was demonstrably unfit. He submits that the trial judge paid insufficient regard to the demands of proportionality by reference to the sentences imposed in other cases: see *Friesen*, at para. 33; *R. v. Parranto*, 2021 SCC 46, [2021] 3 S.C.R. 366, at paras. 10-11. The appellant submits that a sentence in the range of six to nine years' imprisonment was appropriate.

[63] Appellate courts must show considerable deference to sentencing judges' decisions: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 39, 41,

55; *Friesen*, at paras. 25-26. Thus, there is limited scope for appellate intervention: *R. v. Sheppard*, 2025 SCC 29, 507 D.L.R. (4th) 78, at paras. 38-39.

[64] Before addressing the overall length of the total sentence, I return to the calculation error noted above.⁴ By making the one-year sentences on the two child pornography counts consecutive to the sexual interference sentences, but concurrent to each other, the total sentence that was imposed is 11 years' imprisonment, not 12. The trial judge's reasons for sentence make it clear that the sentences for the child pornography counts are concurrent to each other. Her endorsement on the indictment reads the same way. At the top of the first page of the amended warrant of committal is a typed note, in red ink, that reads: "Total sentence is 12 years". This is incorrect. The total sentence is 11 years.

[65] The appellant submits that the trial judge also erred in holding that s. 718.3(7) of the *Criminal Code* required her to make the sentences on all counts consecutive to each other.

[66] Section 718.3(7) provides:

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

(a) that a sentence of imprisonment it imposes for an offence under section 163.1 be served consecutively to a sentence of imprisonment

⁴ This error was identified after the oral hearing. The court requested written submissions from the parties on this issue.

it imposes for a sexual offence under another section of this Act committed against a child; and

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

[67] This provision, introduced as part of the *Tougher Penalties for Child Predators Act*, S.C. 2015, c. 23, came into force on July 17, 2015. In *R. v. S.C.*, 2019 ONCA 199, 145 O.R. (3d) 711, leave to appeal refused, [2019] S.C.C.A. No. 165, this court held that this section does not apply to offences that entirely pre-date the coming into force of this section. The sexual interference offences relating to J.H. and I.H. predated the coming into force of s. 718.3(7). Therefore, this provision, more particularly s. 718.3(7)(b), has no application in this case. Nonetheless, while the trial judge was not required to impose consecutive sentences for these offences, I find that she would have done so in any event. This is apparent from the passage quoted in para. 59, above, in which she noted that there was “no close temporal nexus” between the abuse of the two brothers.

[68] In terms of the child pornography offences, the count relating to J.H. also predated the coming into force of s. 718.3(7)(a). Therefore, a consecutive sentence on this count (count 4) was permissive, but not mandatory. However, the child pornography count relating to I.H. (count 3) ended in 2018. Accordingly, s. 718.3(7)(a) applied and required a consecutive sentence. The trial judge gave

effect to this provision by making the sentence on count 3 consecutive to the sentences on the sexual interference counts.

[69] Returning to the overall length of the sentence imposed, 11 years may seem steep at first blush; however, it is constituted of separate sentences for each victim. Looked at individually, a six-year sentence for serious sexual abuse of either complainant is not objectionable. In *Friesen*, the Supreme Court of Canada held, at para. 114: “mid-single digit penitentiary terms for sexual offences against children are normal and...upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances.”

[70] The trial judge found serious aggravating circumstances that justified individual sentences of this length. The offences against the complainants were similar, but they were separate in time; they did not overlap. The trial judge recognized that stacking consecutive sentences may risk the imposition of a disproportionate global sentence. This is where totality comes into play, another aspect of sentencing that is entitled to deference on appeal: see *R. v. England*, 2024 ONCA 360, 171 O.R. (3d) 401, at para. 105. The trial judge appropriately applied this restraining principle and reduced the global sentence by two years.

[71] Other than correcting the mathematical error outlined above, I would dismiss the appeal from the custodial portion of the sentence imposed.

[72] At the time of sentencing, the Crown requested orders under ss. 161(1)(a), (b), and (c), but did not request an order under s. 161(1)(d) of the *Criminal Code*. The trial judge included an order under s. 161(1)(d). The appellant submits that this was unfair because he was not given the opportunity to make submissions on the appropriateness of such an order, or its length. He was self-represented at the time.

[73] It would have been preferable had submissions been sought from the appellant on this issue. However, this subsection provides that a sentencing judge “shall consider making and may make...an order prohibiting the offender from (d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court” (emphasis added). The discretion to impose this type of order is wide. As Harvison Young J.A. held in *R. v. J.B.*, 2022 ONCA 214, at para. 56: “A sentencing judge need only have an evidentiary basis upon which to conclude that the particular offender poses a serious risk to young children and be satisfied that the terms of the order are [a] reasonable attempt to minimize it”. See also *R. v. K.R.J.*, 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 48.

[74] In this case, there was a basis to make the order. The police found photographs of the complainants on the appellant’s computer that were taken during the times he abused each of them. Having said that, a 20-year order without exceptions is not warranted. Accordingly, I would vary the order under s. 161(1)(d)

to prohibit the appellant from using the internet or other digital network unless he does so in accordance with the following conditions:

- a. On his own personal device which is equipped with software or hardware that blocks access to social networking sites and peer-to-peer file sharing networks.
- b. On any other telecommunications device under the direct and constant supervision of his mother, or by any person approved by the court.
- c. Where he is not self-employed, at his place of business, for business purposes and in accordance with IT and other policies at his place of business.
- d. Not to use any telecommunications device to access the internet or other digital network in order to:
 - i. Access any content that violates the law;
 - ii. Communicate with a person under the age of 18;
 - iii. Access child pornography; participate in chat rooms or bulletin boards that discuss or promote child exploitation, child pornography, sexualized images of children, or other child sexual abuse and exploitation material.

D. DISPOSITION

[75] I would dismiss the appeal against conviction. I would grant leave to appeal sentence and would allow the appeal in part by clarifying that the total custodial sentence is 11 years' imprisonment. I would also vary the order under s. 161(1)(d) as set out above. All other aspects of the sentence remain in force.

Released: April 1, 2026 "G.T.T."

"Gary Trotter J.A."
"I agree. J. Dawe J.A."
"I agree. D.A. Wilson J.A."