

Citation: R. v. Fisher
2018 BCPC 210

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Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal

REGINA

v.

JAMES ALBERT STANLEY FISHER

**REASONS FOR SENTENCE
OF THE
HONOURABLE REGIONAL ADMINISTRATIVE JUDGE R. HAMILTON**

**PUBLICATION BAN PURSUANT TO SECTIONS 486.4(1) AND 486.4(2) OF THE
*CRIMINAL CODE***

Counsel for the Crown:	W. Sayson, Q.C. and A. Starno
Counsel for the Defendant:	W. Smart, Q.C. and N. Gilewicz
Place of Hearing:	Surrey, B.C.
Dates of Hearing:	June 29, 2018 and July 16, 2018
Date of Judgment:	August 21, 2018

INTRODUCTION

[1] Michael William Bannon (“Bannon”) and Reza Moazami (“Moazami”) are two notorious and now convicted pimps who employed and exploited underage girls in the sex trade.

[2] The accused, James Fisher, was a highly decorated and accomplished investigator working for the Vancouver Police Department (“VPD”). Mr. Fisher was the lead investigator in the successful Bannon investigation and a significant member of the investigative team in the successful Moazami investigation. On September 15, 2014, Moazami was convicted of thirty prostitution and sex related crimes and was handed a twenty-three year jail sentence. On January 20, 2018, Bannon pleaded guilty to twenty-two of the counts he was facing and received a fourteen-year jail sentence.

[3] A. was a child prostitute for Bannon between April 7 and July 10, 2015. Of the fourteen-year jail sentence imposed on Bannon, he received six years in jail for his crimes against A.

[4] B. was a child prostitute for Moazami over a lengthy period in 2011.

[5] In the course of investigating these two prostitution rings, Mr. Fisher befriended and worked closely with A. and B.

[6] Between August and December 2015, Mr. Fisher engaged in sexual activities with A. and B. He kissed A. on three occasions and kissed B. on one occasion.

[7] Throughout 2016, the VPD investigated the allegations against Mr. Fisher, and on December 28, 2016 he was arrested and charged with, among other things, two

counts of breach of trust by kissing A. and B., and one count of sexual exploitation of A. because she was only seventeen years old when Mr. Fisher was kissing her.

[8] In January 2017 Mr. Fisher retired from the VPD.

[9] On March 28, 2018, Mr. Fisher entered guilty pleas to the three counts he faces in this sentencing proceeding. Over two days in June and July 2018 counsel made their sentencing submissions before me and these are my reasons for the sentence I am imposing on Mr. Fisher.

MATERIALS BEFORE THE COURT IN THIS SENTENCING HEARING

[10] Both the Crown and counsel for Mr. Fisher have placed before the court extensive materials for my consideration. Those materials include the following:

- a) An Agreed Statement of Facts signed by counsel and Mr. Fisher;
- b) Mr. Fisher filed an Additional Statement of Facts which includes his perspective with respect to some of the facts in the Agreed Statement of Facts;
- c) A Pre-Sentence Report prepared by Travis Mitchell, Senior Probation Officer dated June 20, 2018;
- d) A book of character reference letters filed by Mr. Fisher, including one written by each of his two children Brandon Fisher and Kiley Fisher who read out her letter in court before me on July 16, 2018;
- e) Both a written and audio record of the victim impact statements from A. and B.;
- f) Written transcripts and audio recordings of intercepted conversations between Mr. Fisher and A. and B. after the two victims agreed to act as police agents as part of the VPD investigation into the allegations against Mr. Fisher;
- g) Extensive and thorough written argument filed by counsel; and

- h) Extensive case authorities relied upon by the Crown and Mr. Fisher in support of their different positions regarding a fit sentence to be imposed upon Mr. Fisher.

[11] I have read, and re-read, all of these materials which have been extremely helpful as I consider my decision in this very difficult case.

BACKGROUND

[12] Much of what follows has been taken from the Agreed Statement of Facts filed in this proceeding.

[13] On February 11, 1988, Mr. Fisher swore an Oath of Allegiance with the VPD when he commenced his work as a police officer. Included in that Oath was his commitment to serve the Queen according to law, cause the peace to be kept and preserved, and to prevent all offences against the people and properties of the Queen. He also made the commitment to perform all of his duties as a police officer faithfully and according to the law.

[14] On January 2, 2011, Mr. Fisher transferred into the Special Investigation Section-Counter Exploitation Unit (the "CEU") of the VPD. The CEU is a specialized unit with a mandate targeting prostitution, internet child luring, and internet child pornography. The CEU assists sex trade workers in leaving the sex trade and conducts investigations of prostitution related offences.

[15] CEU members are trained and directed to meet female victims/witnesses in pairs and never to meet alone with female victims/witnesses. Mr. Fisher was advised of this directive when he started with the CEU in early 2011 and the directive was reaffirmed with Mr. Fisher in 2013 or 2014.

A. The Crime Against B.

[16] The Moazami investigation by the CEU was the first in time related to this proceeding. Mr. Fisher first met with B. in early 2011 shortly after he joined the CEU. B. was sixteen years old at that time, and she was being brutally exploited in the sex trade by Mr. Moazami. In her reasons on sentencing Mr. Moazami, Justice Bruce said this about Mr. Moazami's treatment of B.:

[112] ...Mr. Moazami's treatment of B. was abusive, callous, and borders on psychopathic. She was his property to sell and to misuse. There are few mitigating circumstances. The misconduct continued for a relatively lengthy period in 2011.

[17] Mr. Fisher helped B. prepare to testify at Moazami's trial, helped her during the trial, and afterwards. He communicated with B. frequently by text message or telephone. Mr. Fisher and the CEU worked with B. for five years. She was a vulnerable, drug addicted, teenage prostitute. Members of the CEU took B. to the hospital when she was sick and needed medical help due to her drug use.

[18] Mr. Fisher inserted himself into B.'s life as a police investigator, but he became more than that. He intervened in her life to help her out when that help was not related to the Moazami investigation. I believe he did so because he cared for the welfare of this sixteen-year-old, drug addicted, sex-trade worker who was so very clearly being harmed in unspeakable ways by her pimp. The Agreed Statement of Facts sets out in greater detail the things Mr. Fisher did for B. that went beyond pursuing the Moazami investigation. On the surface, those things were done by a police officer who cared for the welfare of his child victim. But that is where this case gets complicated.

[19] B. testified in the Moazami trial. It is fair to say that she was an unimpressive witness in Justice Bruce's eyes. That is not too surprising when one takes note of B.'s life to that point in time:

- a) B. had been involved in the sex trade from a young age, Mr. Fisher believed she had been involved as early as age thirteen;
- b) She had been involved in a previous abusive relationship;
- c) She had been victimized and pimped by Moazami who was not the only pimp she had worked for;
- d) She was addicted to crack cocaine at age twelve and entered a drug rehabilitation program at age thirteen;
- e) She was using heroin when she met Mr. Fisher in 2011 and he helped her to start taking Suboxone, which she took for years; and
- f) Her father was a negative influence on her life and Mr. Fisher held a negative view of her father.

[20] Mr. Fisher worked with B. on the Moazami investigation between 2011 and 2013 when the trial commenced over a number of days starting in September 2013. In a ruling dated December 12, 2013, Justice Bruce made serious findings against the credibility and reliability of B.'s testimony. In fact, Justice Bruce said, "It is difficult to imagine a less credible witness than B. She blatantly lied under oath and showed no pang of conscience despite the affirmation she swore." The criticism goes on.

[21] In submissions before me, Mr. Fisher argued that I should be careful taking at face value B.'s victim impact statement filed in these proceedings, given Justice Bruce's criticism of B.'s credibility and reliability in the Moazami trial.

[22] To be sure, B.'s video recorded victim impact statement was not given under oath or affirmation, and anything she said has not been tested on cross-examination.

[23] I do not view the content of the victim impact statement to be akin to a teenager testifying against her psychopathic pimp at a trial. We are talking about a drug addicted child whose pathway through life was lost before she ever understood the world around her. She was forced onto the street night after night to be sexually assaulted by strange men. She was someone in survival mode. She was a child in survival mode. Did she make up stories while in survival mode? Probably. Was she in survival mode in the trial before Justice Bruce? Probably.

[24] I do not quarrel with Justice Bruce's findings about B., but what I do not accept is that those findings are in any way transportable into this proceeding. B., in giving her victim impact statement, was not likely in survival mode. She had nothing to gain, or no consequence to avoid, by telling lies and making up the impact Mr. Fisher's crime has had on her life. Could she have exaggerated that impact on her life? Absolutely. But as trial judges we see on a daily basis victims telling us how a crime has impacted their life. Some exaggerate, some minimize, but in very few cases can we accept, as objectively established, the impact the victim tells us the crime has had on their life. Perception is their reality and we factor their nuanced statements into our sentencing decisions without a critical analysis of how reliable or accurate their feelings are.

[25] So, while at the time of the Moazami trial B. was found to be an unreliable witness, I do not factor those findings into my determination of the impact that Mr. Fisher's crime has had on B. as told to me by B.

[26] As I have earlier indicated, on September 15, 2014, Mr. Moazami was convicted of thirty counts of prostitution related offences and sexual offences. On November 10, 2015, Mr. Moazami was sent to jail for twenty-three years.

[27] On December 3, 2015 (after the Moazami trial), B. sent a text message to Mr. Fisher. Mr. Fisher responded asking B. to meet with him to discuss an investigation into a pimp. Mr. Fisher met B. in his personal vehicle alone.

[28] While in his vehicle with B., Mr. Fisher complimented her on her physical appearance calling her attractive. They chatted for about fifteen minutes and as they were saying goodbye they hugged. Mr. Fisher asked B. for a goodnight kiss and he kissed her on her lips.

[29] B. exited Mr. Fisher's vehicle and began to cry. She was upset over the kiss in his vehicle. She called her ex-boyfriend to pick her up. Following the kissing incident, B. told the police that she began to drink every day. At the time of this incident B. felt that she and Mr. Fisher were very close. She viewed him as a father figure. She trusted him more than anyone else in her life.

[30] While I do not know that the timing of this kissing incident is significant, I cannot ignore that the incident occurred about three weeks after Moazami had been sentenced to twenty-three years in prison. As well, this incident occurred during the same time that Mr. Fisher was committing sexual offences against A. I pause here to note that Mr. Fisher has plead guilty to a breach of trust by kissing B. He specifically has not plead guilty to kissing her for a sexual purpose. Regardless of Mr. Fisher's intent when he kissed B., I view the kiss on her lips as a sexual activity.

[31] Ultimately, B. confided to someone connected to an organization that assists sex trade workers and the incident was reported to the police. The report of this incident to the police on May 27, 2016 came on the heels of the report to the police of the incidents

involving A. Again, as I have already mentioned, the VPD investigation into Mr. Fisher was active throughout 2016 and led to his arrest on December 28, 2016.

B. The Crimes Against A.

[32] In the summer of 2014, the CEU started their investigation into Bannon's prostitution ring. Mr. Fisher was the lead investigator. Bannon was arrested in August 2014; he was on parole at the time. His parole was revoked. Bannon was re-released in March 2015 and resumed pimping underage girls.

[33] Bannon met A. in April 2015 when she was seventeen years old. He convinced A. to work for him in the sex trade and she gave him half of her nightly earnings. Over the months that she worked for Bannon, A. estimates she had sexual encounters with 200 clients.

[34] As the investigation progressed, Mr. Fisher and A. were in frequent contact, mostly by text messages. A. played an important role in providing key information to the police and Mr. Fisher to further the VPD investigation into Bannon's crimes. Mr. Fisher became involved in A.'s life regularly communicating with the other adults in her life as to her whereabouts and her wellbeing.

I. The First Incident

[35] During an evening between August 22nd and August 30th, 2015, Mr. Fisher met with A. alone in his car. This was the first time Mr. Fisher had met alone with A. Mr. Fisher told A. that he had two tickets to the PNE. They met near the Main Street SkyTrain station and spoke in his car. Mr. Fisher then drove A. to the West End where

they spoke some more. A. then asked Mr. Fisher to drive her to a Greek restaurant near Granville Street and Davie Street.

[36] As A. was getting ready to leave Mr. Fisher's car, she hugged Mr. Fisher. As she tried to pull out of the hug, Mr. Fisher continued to hug her so she hugged him again.

[37] As the hugging was ending, Mr. Fisher made a nodding motion with his head and leaned in and kissed A. They kissed for thirty seconds to a minute including French kissing. As A. was not used to saying "no" she "just went with it."

[38] At some point during this first kissing incident, Mr. Fisher said to A., "We shouldn't be doing this."

[39] Mr. Fisher and A. had further contact during the Bannon investigation, including a meeting on October 26, 2015 when A. provided a statement for the Bannon file. Mr. Fisher picked up A. from her father's home to take her to the detachment and he complimented A. on her physical appearance. Mr. Fisher hugged A. after she gave her statement and he told her she did well in the interview.

II. The Second Incident

[40] On November 21, 2015, Mr. Fisher arranged to meet with A. at her friend's home where A. was staying at the time. Mr. Fisher's purpose for the meeting was to give A. a book on drug addiction and recovery that he thought might help her.

[41] Mr. Fisher arrived to meet A. at about midnight.

[42] Mr. Fisher and A. sat together in Mr. Fisher's car outside the friend's home. Mr. Fisher was alone and off duty at the time. They sat in Mr. Fisher's car for about thirty minutes and talked. There was no sexual content to their conversation.

[43] When A. was about to leave, she again initiated a hug, and when she attempted to pull out of the hug Mr. Fisher continued to hold her. They kissed during the hug, and at one point A. was leaned back between the seats.

[44] A. was concerned that her friend's father would come outside and catch the two kissing. Mr. Fisher asked for one more kiss and A. agreed. A. was leaned back with her head on the console and they kissed for about thirty seconds.

[45] At some point during this kissing, A. invited Mr. Fisher to go with her to some other location where she could show Mr. Fisher more of her skills. Mr. Fisher responded that they would talk about that more in the future.

[46] A. then exited Mr. Fisher's car and returned inside her friend's home.

[47] The kissing during this second incident included French kissing and lasted for approximately ten minutes. At some point, A.'s bra became displaced and she believes her breast was exposed.

[48] A. was particularly vulnerable around the time of this second incident. One week prior she had been admitted to the hospital bleeding from her wrists which she had cut. She had consumed a significant quantity of drugs and alcohol. Upon her release from hospital A. was arrested for an unrelated issue. As a result of all of these earlier events, A. could no longer reside with her step-father and Mr. Fisher helped A. find a place to stay. Also around the same time, A. had expressed to Mr. Fisher her sense of helplessness around her addiction.

[49] At the time of this second incident, A. had not slept for a number of days, and had consumed a significant quantity of drugs and alcohol in the days following her arrest. She was also beginning to experience psychotic episodes.

III. The Third Incident

[50] At some point around the second incident, A. told Mr. Fisher about her psychotic episodes, and in response, Mr. Fisher made her a series of appointments to see a psychiatrist, Dr. Locke.

[51] December 7, 2015 was A.'s second appointment with Dr. Locke, and A.'s social worker asked if Mr. Fisher could take A. to the appointment. Mr. Fisher met A. at a Denny's restaurant, and he drove her to his police detachment where he picked up a police car and drove her to the appointment.

[52] A. met with Dr. Locke for approximately twenty minutes, and then at Dr. Locke's request, Mr. Fisher came into the appointment for the final ten minutes. While meeting with Dr. Locke, Mr. Fisher expressed concern about A.'s psychotic episodes, including delusions and difficulty distinguishing dreams from reality.

[53] Following the appointment with Dr. Locke, Mr. Fisher drove A. back to the police detachment. Prior to getting into the vehicle A. asked herself whether she wanted to get back into his car again, but she reasoned that Mr. Fisher would probably not try anything, especially after having attended her psychiatric appointment with her. Mr. Fisher told A. that he had one more thing to do and took her back to the detachment.

[54] Once back at the detachment, Mr. Fisher asked A. if she could identify the people in a photograph. It was a single photograph depicting two naked women in an

embrace. One of the women was A. and the photo was relevant to the Bannon investigation.

[55] While at the detachment, Mr. Fisher and A. went alone into an adjacent office that was dimly lit.

[56] While in the office they hugged and Mr. Fisher closed the door. While hugging A., Mr. Fisher began kissing her.

[57] A. was not feeling well. She was coming down off drugs. A. was hot and sweating and she did not want to be kissing Mr. Fisher. A. made it clear to Mr. Fisher that she did not want to be kissing him. On the two prior occasions while kissing Mr. Fisher, A. pretended she was interested in the kissing.

[58] A. told Mr. Fisher that was enough and that she did not feel like kissing him. Mr. Fisher asked for one more kiss and A. acquiesced. The kiss lasted for about one minute. They then left the office and the detachment. The kissing in the office lasted about five minutes and included French kissing.

[59] A. was seventeen years old at the time of all three kissing incidents and Mr. Fisher knew her age.

[60] Mr. Fisher also knew that A.:

- a) Continued to work as a sex trade worker;
- b) Was in the care of the Ministry, although sometimes she lived with her step-father and sometimes she stayed at the location where she worked (the in-call);
- c) Rarely had contact with her biological mother;
- d) Had no contact with her biological father;

- e) Had mental health issues which included: cutting herself, periodically being suicidal, and later experiencing psychotic episodes. The psychotic episodes included delusions and difficulty distinguishing dreams from reality;
- f) Had substance abuse problems, including frequent use of crystal methamphetamine;
- g) Had been victimized and pimped by Bannon; and
- h) Had not completed high school and did not regularly attend school.

[61] Following these kissing incidents, A. wondered if anyone would believe her if she told them what happened between her and Mr. Fisher. Ultimately, in mid-March 2016, she told her youth worker what had happened.

[62] On March 25, 2016, A. was at a rave party in Vancouver and she was apprehended by security for drug possession. She was taken to the police. While interacting with the police, she told the officer about the kissing incidents with Mr. Fisher and that officer notified other officers and a supervisor. Thus started a lengthy and thorough VPD investigation into A.'s allegations.

[63] The VPD investigation included engaging A. on June 15, 2016 and later B. on September 23, 2016 as police agents and included intercepted phone calls and recorded meetings with Mr. Fisher.

IV. Other Information/Issues

[64] A fair amount of the materials placed before me make reference to two issues that impacted this police investigation and Mr. Fisher.

[65] First, during an interview with respect to a completely different investigation, Mr. Fisher and a number of other police detectives learned of a rumour circulating among

sex trade workers that Mr. Fisher had engaged in sexual intercourse with A. This information launched a new police investigation to determine if there was any truth to the rumour.

[66] This new investigation began at a time after A. had agreed to act as a police agent, so much of her communication with Mr. Fisher on this sexual intercourse rumour investigation was intercepted by the police investigators.

[67] What is clear from a review of the intercepted communication related to this sexual intercourse rumour is that Mr. Fisher was helping, preparing, and arguably coaching A. as to what to say to investigators who were going to interview her as part of this investigation.

[68] Knowing that he had been involved in the three kissing incidents with A. would have been a grave concern for Mr. Fisher if A. disclosed those incidents while being interviewed for this investigation. But equally concerning to Mr. Fisher would be the prospect that he was somehow credibly implicated in the sexual intercourse rumour.

[69] Thus, Mr. Fisher had two pressing concerns facing him at the prospect of A. being interviewed, and both would have catastrophic consequences to his professional career and likely beyond. In the intercepted communications between Mr. Fisher and A., he is quite clearly giving her advice and guidance about what to say when she was interviewed about the sexual intercourse rumour.

[70] I want to be clear, there is no evidence before me, at all, that Mr. Fisher had sexual intercourse with A. Mr. Fisher's concern that he not be implicated in a career ending false rumour would have Mr. Fisher doing what he could to protect himself. But

the not so subtle overlay on all of this is that Mr. Fisher was guilty of career ending sexual crimes against A. that he would be motivated to keep silent.

[71] In the final analysis, having carefully reviewed the transcripts of the intercepted communications between Mr. Fisher and A., there is nothing that amounts to Mr. Fisher asking A. to lie to the police, or to deceive the police, or do anything to obstruct the police in either investigation.

[72] The Crown urges me to consider the content of these intercepted communications when assessing Mr. Fisher's character in light of the many character references filed by Mr. Fisher. I will do so, but I find that the intercepted communications between Mr. Fisher and A. do not depict a desperate police officer trying to protect his career by encouraging A. to lie to the investigators.

[73] The second issue is this. Enmeshed in this already complicated case was a stabbing incident that occurred in Burnaby on June 8, 2015. A male was stabbed and witnesses reported seeing a male and a female involved in the physical altercation with the stabbing victim. The male and female fled the scene in what turned out to be a stolen vehicle.

[74] The following day, June 9, 2015, B. texted Mr. Fisher asking to meet with him that day in private. Mr. Fisher agreed to meet, and he told B. that his partner would be present, but that they could talk in private. While it is not clear from the Agreed Statement of Facts exactly when Mr. Fisher learned of this, it is clear that B. was the female at the scene of the stabbing incident and the male was her ex-boyfriend.

[75] At some point around this time, B. learned from Mr. Fisher that the stabbing victim's injuries were not that serious, that the police did not know who the female at the scene was, and that the victim knew several details about B.'s ex-boyfriend.

[76] On June 10, 2015, the day after his meeting with B., Mr. Fisher contacted the Burnaby RCMP and advised Constable Grant that he had received a phone call from a female who had witnessed the stabbing (B.). Mr. Fisher gave Constable Grant B.'s name, date of birth, and phone number. On that same day, Mr. Fisher contacted B. to advise her that he had spoken with the Burnaby RCMP and that they wanted to meet with her. B. was reluctant to contact the police, and Mr. Fisher told her that the police would definitely be contacting her and that it would be better for B. if she contacted the police first.

[77] On June 15, 2015, B. changed her cellular phone number and Mr. Fisher was aware of her new phone number. Investigators involved in the Burnaby stabbing investigation communicated with Mr. Fisher that they were having no success contacting B. to interview her about the Burnaby stabbing.

[78] Despite numerous contacts between Mr. Fisher and B. using her new cellular phone number, Mr. Fisher never gave the Burnaby RCMP that new number to facilitate their contact with B. In fact, at one point Mr. Fisher told one of the Burnaby investigators that, "If I find a way to reach her I will pass on your information and ask her (again) to call you."

[79] B. never spoke with the Burnaby RCMP regarding the stabbing incident.

[80] Where this Burnaby stabbing incident becomes much more complicated is that after B. agreed to become a police agent for the VPD investigation into the kissing incident involving her, the VPD investigators believed that Mr. Fisher had obstructed justice by not assisting with the Burnaby stabbing investigation and facilitating contact between those investigators and B. In addition, it turns out that B. admitted to Mr. Fisher that she was the person who stabbed the victim in Burnaby.

[81] During an intercepted phone conversation between Mr. Fisher and B. on November 7, 2016, B. said to Mr. Fisher that she had not told anyone other than him that she stabbed the victim. Mr. Fisher said to B. that he had not told anyone. But then he said that he did not know that B. was anything other than a witness to the stabbing until that phone conversation, and he said that he would not repeat that information. He goes on to say, "I didn't know that before, there's no way I would have even said it if I did, but I didn't know anything. I knew...that you were there and you said that you would tell them that you were there and that was it." Mr. Fisher clarified that he thought B.'s ex-boyfriend had stabbed the victim.

[82] About a week after this intercepted phone call, one of the Burnaby investigators contacted Mr. Fisher to discuss further what he knew about B.'s involvement in the Burnaby stabbing. In this phone call, Mr. Fisher told the investigator that he could not recall exactly what B. had told him, but he thought that she was just a witness to the stabbing. Mr. Fisher did not tell the investigator that B. had very recently told him that she was the person who stabbed the victim.

[83] The next day, on November 16, 2016, B. called Mr. Fisher and, in the course of that intercepted phone call, B. tells Mr. Fisher that he and her ex-boyfriend are the only

people she had told that she stabbed the victim in Burnaby. In response Mr. Fisher says, “Don’t say...that. I don’t even know what you’re talking about.”

[84] At no point during the Burnaby stabbing investigation did Mr. Fisher tell the Burnaby investigators that B. had told him that she was the one who stabbed the victim in Burnaby.

[85] Again, the Crown has put this information before the court to shine a different light on Mr. Fisher’s character in contrast to the character references set out in the many letters filed by Mr. Fisher in this case.

[86] I will address this character issue further in this decision, but it bears repeating that Mr. Fisher is not being sentenced for any crime relating to obstructing justice. Having said that, Mr. Fisher is an officer of the law who took an oath to uphold the laws of the land and keep the peace. He had a confession from B. that she stabbed the Burnaby victim, and he did nothing with that evidence. Even if B. was a person of suspect credibility (as noted by Justice Bruce in her Moazami decision), a police officer executing his duty as he was sworn to do, clearly had an obligation to do more with B.’s admission than bury it.

POSITION OF THE PARTIES

[87] The Crown seeks a global sentence for all three counts of eighteen to twenty months in jail followed by probation for a period of two to three years. The Crown points out that for the conviction for the sexual exploitation of A., there is a mandatory minimum jail sentence of ninety days. The Crown also points out that for the two convictions for breach of trust by kissing A. and B., there is no mandatory minimum

sentence, but the maximum jail sentence is five years. The Crown opposes a Conditional Sentence Order (“CSO”) for the two breach of trust convictions, but acknowledges that a CSO is available. A CSO is not available for the sexual exploitation conviction because of the mandatory minimum jail sentence. The Crown also seeks some ancillary orders.

[88] Mr. Fisher, through counsel, does not contest the mandatory minimum ninety-day jail sentence for the sexual exploitation conviction, but seeks an order that the ninety days be served intermittently on weekends. For the two breach of trust convictions, Mr. Fisher seeks lengthy CSOs so that he may serve his sentence in the community under house arrest, or a combination of house arrest and a curfew with exceptions that would permit him to be away from his home for employment purposes. He also proposes a term that would include significant community work service hours. The CSOs would be served concurrently with each other and consecutively to the ninety-day intermittent jail sentence.

[89] Mr. Fisher’s counsel did not make any submissions indicating opposition to the probation order sought by the Crown or any of the terms of the probation order sought by the Crown, and from that I infer that a period of probation is not opposed by Mr. Fisher.

APPLICABLE SENTENCING PRINCIPLES

[90] The principles and objectives of sentencing are set out in sections 718 - 718.2 of the *Criminal Code*. Sentences must be proportionate to the moral blameworthiness of the offender and must reflect parity with sentences imposed upon similar offenders for similar offences.

[91] Sentences must impose just sanctions to meet one or more of the following objectives:

- a) to denounce unlawful conduct;
- b) to deter the offender and other persons from committing offences;
- c) to separate offenders from society, where necessary;
- d) to assist in rehabilitating offenders;
- e) to provide reparations for harm done to victims or to the community; and
- f) to promote a sense of responsibility in offenders, and an acknowledgement of the harm done to victims and to the community.

[92] There can be no doubt that in breach of trust cases and sexual exploitation cases the paramount sentencing principles are denunciation and general deterrence. That is not to say that specific deterrence or rehabilitation of the offender, or the other sentencing objectives listed above, do not factor into the sentencing decision in these kinds of cases. Those sentencing principles should be considered, but the sentence imposed should send a very clear message of society's absolute and unequivocal condemnation of the offender's conduct and represent a symbolic collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values (*R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 81).

MR. FISHER'S CIRCUMSTANCES

[93] Mr. Fisher is 60 years old and was born in Burnaby, B.C.

[94] He has three siblings, a sister and two brothers. His younger brother Doug is a former member of the VPD who now works for the Metro Vancouver Transit Police.

[95] Mr. Fisher completed high school and became an accomplished hockey referee. At one point he worked as a referee in the Western Hockey League with a goal to ultimately work in the NHL. He retired from refereeing hockey in 1990 after working in that field for about thirteen years and having refereed nationally and internationally, including working as a referee in the national junior hockey championship in 1990.

[96] Between 2001 and 2011 Mr. Fisher was involved in young female hockey associations and he gained significant prominence acting in leadership roles in those associations. Between 2009 and 2011 he managed a high-performance female hockey team for girls aged 15 to 17 years old. His team played throughout western Canada.

[97] From 1978 to 1984, Mr. Fisher studied Criminology at Douglas College and obtained a Certificate in Criminology in 1984. In 1984 he worked as a Youth Corrections Officer in the Porteau Cove S.A.L.T. outdoor program.

[98] Mr. Fisher joined the VPD in 1988 when he was thirty years old. His career with the VPD is impressive. For all but seventeen months of his twenty-nine-year career he worked in specialty investigative units. He helped create the Gang Task Force, he studied foreign languages to help him fulfil his duties with the Gang Task Force, and he worked in units to connect with youth who were at risk of gang recruitment. He also worked extensively investigating Asian Crime and Asian Organized Crime.

[99] He has appeared internationally at briefings with foreign police services to pass along his vast knowledge of organized crime.

[100] Over his lengthy police career, he has received national and international recognition for his investigative skills and expertise with respect to gangs and organized

crime. He has received national and international accolades and awards for his dedication to policing.

[101] Over his many years with the VPD, Mr. Fisher received numerous service awards recognizing his significant community work service.

[102] Mr. Fisher married his wife Lisa in September 1986 - they have been married nearly thirty-two years. The couple have two children, Brandon born in August 1990 and Kiley born in July 1993.

[103] In short, Mr. Fisher has led an exemplary life of service to his community, to the VPD, and to his family.

[104] Mr. Fisher filed a book of character reference letters including letters from former VPD colleagues, his brother Doug, another of Moazami's victims, and his two children.

[105] Most of those letters speak highly of the James Fisher they know. Some of the letters from former colleagues offer some insight into Mr. Fisher's work habits which, I think, could fairly describe Mr. Fisher as a work-a-holic. Some of the letters have a tone of criticism about just how hard Mr. Fisher worked as a detective and investigator with the VPD. The letters from his children are written by two children who adore their father for all he has done for them over the years. Kiley, showing immense courage, read out her letter to me in court.

[106] What I cannot and will not lose sight of is that the James Fisher known to all of these character references is the same James Fisher who committed these crimes against A. and B. The same person has acted in ways that cannot be reconciled with the James Fisher known by his family and colleagues. His conduct with respect to the

Burnaby stabbing incident is also inconsistent with the kind of police officer everyone knew Mr. Fisher to be. And while it is very important for the court to hear from members of Mr. Fisher's community who know him, there is in this case a very different and hidden side to Mr. Fisher that is unknown to the authors of the character references. My task is to sentence James Fisher who has these irreconcilable aspects to his life.

[107] The consequences of this case have been catastrophic for Mr. Fisher.

[108] He was arrested at work and led in handcuffs through the detachment. He spent a night in jail. His wife was interrogated by police officers in her home. The case has had intensive local media attention as well as media coverage in other countries.

[109] Mr. Fisher's marriage is in jeopardy. His reputation has been irreparably damaged. He has been publicly humiliated. He has no prospect of turning his career and experience with the VPD into employment opportunities in related fields in his retirement.

[110] His conduct may have tarnished the reputation of the VPD and I am sure that many of his colleagues have faced negative consequences from the fall-out of Mr. Fisher's exposure for the crimes he committed.

[111] The consequences to Mr. Fisher, as I have said, have been catastrophic. But that ought to come as no surprise. Mr. Fisher breached the trust that A. and B. had placed in him, and he kissed seventeen-year-old A. when he knew what he was doing was a crime.

[112] And so, when determining a fit sentence for Mr. Fisher I will take into consideration the price he has already paid for his crimes, but that was the price he ought to have known he would pay and he nonetheless committed these offences.

MITIGATING AND AGGRAVATING FACTORS

A. Mitigating Factors

[113] There are a number of factors that I will take into consideration in mitigation of the sentence I impose on Mr. Fisher.

[114] First, and clearly the most significant, is Mr. Fisher's guilty plea. By pleading guilty and taking responsibility for his crimes, Mr. Fisher spared A. and B. their re-victimization of having to come to court and relive these experiences in public and in front of strangers. This case has been very well attended by members of the public and the media, so not only would A. and B. have to testify in open court and in front of strangers, their evidence of their experiences at the hands of Mr. Fisher would have been widely broadcast in the media. Mr. Fisher's guilty pleas has spared them that further trauma and is a significant sign of his remorse for his crimes.

[115] Second, Mr. Fisher, as I have already noted, has paid dearly for his crimes. I have already listed the more significant consequences to Mr. Fisher personally, and in determining a fit sentence, I must consider those consequences to him.

[116] Third, Mr. Fisher's wife, children, and family have paid a significant price for his crimes. They have paid this price having done absolutely nothing wrong. The family was blindsided with Mr. Fisher's arrest, and they have been paying for his crimes ever since.

[117] Fourth, Mr. Fisher comes before the court with no criminal record and an otherwise unblemished career as a successful, internationally recognized, and awarded police detective.

[118] Fifth, I am firmly convinced that Mr. Fisher is truly remorseful for what he has done in this case. I have already mentioned his guilty plea. Further, on June 29, 2018, Mr. Fisher addressed the court. He gave a heartfelt and genuine apology for the harm he has caused and all of the people he has hurt in this case. There can be no doubt that Mr. Fisher is remorseful and he takes full responsibility for his crimes.

B. Aggravating Factors

[119] Mr. Fisher's breach of trust was significant, both to the public trust, and more importantly, to the trust of A. and B. Mr. Fisher held the public's trust by virtue of his position in society as a police officer and the oath he took upon becoming a police officer. The public entrusted Mr. Fisher with their safety and security. The public entrusted Mr. Fisher with their confidence that he would investigate crimes to the best of his ability and that he would do what he lawfully could to bring criminals to account for their crimes. Mr. Fisher breached that public trust when he made the choice to commit his own crimes and victimize A. and B.

[120] Mr. Fisher breached the trust that A. and B. placed in him through the years they spent working together on the Bannon and Moazami investigations. The relationship they developed could be characterized as one of a helpless vulnerable victim and her saviour. It was Mr. Fisher's job to try and extract A. and B. from the sex trade where they were victimized by their pimps and strangers. Mr. Fisher then made the choice to

victimize them again and he was able to do so because of that trust these women had in Mr. Fisher.

[121] Second, A. and B. were fragile and vulnerable young ladies. In fact, A. was only seventeen and still a child when Mr. Fisher started kissing her. Mr. Fisher was well aware of the vulnerabilities of these women. With his vast knowledge of the sex trade involving underage women, Mr. Fisher knew that A. could not legally consent to his sexual advances. He knew that what he was doing was a crime, yet he proceeded to meet alone with A. and kiss her. He did so knowing that she suffered from mental health difficulties, was at times suicidal, and that she was suffering delusions. Despite knowing how fragile she was and how vulnerable she was, he still made the choice to kiss her repeatedly.

[122] Third, these crimes were not isolated events. There were a total of four instances of kissing between August 2015 and early December 2015, a period of roughly three to four months. There were two victims and between November 21, 2015 and December 7, 2015 - a period of just over two weeks - Mr. Fisher kissed A. twice and B. once. In my view, Mr. Fisher's pattern of behaviour was escalating. Indeed, on the third incident with A. at the police station, A. was clearly telling Mr. Fisher she did not want to be kissing him and she wanted to leave. Despite her protests, Mr. Fisher asked her for one more kiss. Despite my view that Mr. Fisher's behaviour was escalating at that point, there is no evidence before me of any further incidents of kissing after the December 7, 2015 kiss with A.

[123] Fourth, the impact of these crimes on the victims is a significant aggravating factor. With respect to B., she relates in her Victim Impact Statement that after the kiss

with Mr. Fisher she relapsed after five years of being clean and she attempted suicide twice. Mr. Fisher has urged me to be cautious taking at face value what B. says in her Victim Impact Statement, given the adverse credibility findings of Justice Bruce in the Moazami trial. I have already commented on this issue earlier in these reasons and I will not repeat what I have already said. But clearly, B. was a victim at the hands of other people from the time she was a child. Mr. Fisher came to rescue her from a psychopathic pimp and developed a father-figure relationship with her. I have no difficulty concluding that Mr. Fisher's crime against B. had a devastating impact on her.

[124] With respect to A., she too speaks in her Victim Impact Statement of the consequences she has suffered as a result of these crimes. She says that Mr. Fisher's sexual advances towards her took her back to her experiences in the sex trade where the expectation was that if someone did something for her she was expected to reciprocate with sex. From her perspective, A. felt at the time that Mr. Fisher was taking from her that which she had learned to expect to give if someone had done something for her. A.'s perspective can be fairly described as one where she thought at the time that kissing Mr. Fisher was the price she had to pay for the help Mr. Fisher gave her in the Bannon investigation.

[125] A. also speaks in her Victim Impact Statement about her extreme vulnerability at the time Mr. Fisher was kissing her and Mr. Fisher knew that she was vulnerable. She was suicidal, having cut herself during the relevant time, and she was becoming delusional and was under the care of a psychiatrist, Dr. Locke, at the time. Mr. Fisher knew about all of this.

[126] Thus, it is my view that the impact of these crimes on these victims was a profound violation of their relationship and trust in Mr. Fisher and that the crimes had significant and substantially adverse consequences for A. and B.

[127] Fifth, Mr. Fisher's crimes may have tarnished the reputation of the VPD. I am not persuaded that this is a significant aggravating factor, as there is no real evidence that a rogue police officer or even a highly respected and internationally recognized rogue police officer, when caught, harms the reputation and integrity of the police department. The actions of that police officer would be associated with the police department, but I am not satisfied that the discovery of a criminal, like Mr. Fisher, within the ranks of a police force would necessarily lead to a diminished reputation of that police force. In fact, informed members of the public in this case would know that when the VPD learned of A.'s allegations and shortly thereafter B.'s allegations, the VPD undertook a thorough investigation and gathered sufficient compelling evidence of Mr. Fisher's crimes to mount a successful prosecution of their former colleague. Any harm to the reputation of the VPD by Mr. Fisher's crimes, I believe, would be mitigated if not fully addressed by the investigative response by the VPD to bring Mr. Fisher to justice.

[128] Sixth, the Crown argues that Mr. Fisher's crimes could have some adverse impact on the Moazami and Bannon cases. I do not accept this speculative concern to amount to an aggravating feature of Mr. Fisher's crimes. Nothing has happened to adversely impact either of those two successful prosecutions to this point despite the fact that Mr. Fisher was arrested in December 2016. While it is true that, as a result of the exposure of Mr. Fisher's crimes, the Crown in the Bannon prosecution was put to additional and significant work to disclose the details of Mr. Fisher's crimes. Mr.

Bannon nonetheless pleaded guilty in January 2018, so the only adverse effect on that prosecution was the additional resources expended to address the disclosure of the Fisher case to Bannon's defence. I am not prepared to consider this factor as an aggravating factor in this case.

REVIEW OF CASE AUTHORITIES

[129] The Crown and counsel for Mr. Fisher placed before me a number of cases in support of their respective sentencing positions. As is often the case, the facts of this case are not closely replicated in prior decisions, so the task of the sentencing judge becomes a very individualized process. There are cases with many similar facts that provide guidance in terms of parity of sentences, but it is rare to find cases or a case with compellingly similar facts.

[130] For that reason, I will briefly review the cases presented by counsel and then discuss the cases I find to be most persuasive as I determine a fit sentence for Mr. Fisher.

A. Crown Authorities

[131] The Crown provided me with a book of nine authorities, but some of those authorities are the appeal decisions of the trial judge and I do not propose to review the appeal decisions in any detail.

[132] In *R. v. Greenhalgh*, 2011 BCSC 511, Mr. Justice Verhoeven sentenced Mr. Greenhalgh for three counts of sexual assault and one count of breach of trust.

[133] Mr. Greenhalgh was a Canadian Border Services Officer who after a lengthy trial was convicted for strip searching four women crossing into Canada from the United

States. Mr. Greenhalgh conducted illegal and feigned strip searches of the four women and he sexually touched three of them. Mr. Greenhalgh denied that the strip searches ever happened and accused his victims of fabricating their stories.

[134] Mr. Justice Verhoeven convicted Mr. Greenhalgh following a trial and on March 4, 2011, delivered his sentencing decision.

[135] Mr. Greenhalgh was thirty-one years old, married but separated from his wife. He had two young children. He had no criminal record. He had strong community support and no history of mental illness or substance abuse. He was determined to be a moderate risk to reoffend. He filed character reference letters describing Mr. Greenhalgh as trustworthy, kind and courteous.

[136] As a result of facing the criminal charges, Mr. Greenhalgh suffered embarrassment and struggled to find work.

[137] Mr. Greenhalgh's offences involved strangers. He had no relationship with the women before forcing them to strip naked to be searched. He was in a significant position of authority over his victims, and he exposed his victims to a profoundly humiliating and degrading violation of their sexual and personal integrity.

[138] The Crown sought a jail sentence of thirty to thirty-six months, or in the alternative, a jail sentence of two years less a day followed by three years' probation.

[139] Mr. Greenhalgh sought a Conditional Sentence of two years less a day followed by two years' probation.

[140] Justice Verhoeven found that cases involving the sentencing of police officers offered helpful guidance in determining a fit sentence for Mr. Greenhalgh because he

was not given any case law involving the sentencing of a border guard in similar circumstances.

[141] At paragraphs 72 to 74 of his decision, Mr. Justice Verhoeven says this:

[72] In the case of Mr. Greenhalgh, the principles of general deterrence and denunciation are paramount. In terms of deterrence, there must be a clear and unmistakable message from this court to all persons who have been entrusted with state authority, such as border guards, police officers and peace officers generally, that crimes of the nature committed here, involving gross abuse of trust and authority, will attract severe penalties.

[73] Arguably, however, denunciation is even more important than deterrence in this case. As noted, instances such as this are rare in Canada. Overwhelmingly, peace officers and others respect their responsibilities and do not abuse their positions. The public expects and demands no less. In that context, Mr. Greenhalgh's offences would shock and appal nearly every Canadian. The sentence imposed must clearly denounce and condemn Mr. Greenhalgh's unlawful conduct.

[74] For that reason, a conditional sentence order is in my view wholly and completely inappropriate. While as noted in Proulx, the principles of deterrence and denunciation can often be met with a conditional sentence, there may be circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way to express society's condemnation of the offender's conduct: Proulx, supra, para. 106. This is such a case. I am of the view that a conditional sentence would not be consistent with the fundamental purpose and principles of sentencing as set out in ss. 718 to 718.2 of the Code, and is therefore not available to Mr. Greenhalgh, pursuant to s. 742.1 of the Code.

[142] Mr. Justice Verhoeven imposed a sentence of two years less a day followed by three years of probation.

[143] Mr. Justice Verhoeven's sentencing decision was upheld on appeal.

[144] In *R. v. Cook*, 2010 ONSC 5016 Justice Hill of the Ontario Superior Court of Justice sentenced a police officer following his conviction after a lengthy trial on five offences, two of which were crimes of breach of trust; the balance of the convictions related to drug offences.

[145] Mr. Cook was a 43-year-old officer on active duty when he stole what he believed were fifteen packages of cocaine from a crime scene and stored them in his garage. In fact, the packages contained flour and were equipped with tracking devices so his crime was rather easily detected.

[146] Mr. Cook was married with two daughters and was well regarded in the community.

[147] The Crown sought a global sentence of twelve years in jail and Mr. Cook sought a sentence of two years in jail.

[148] Justice Hill sentenced Mr. Cook to five years and eight months in jail and her sentencing decision contains a fairly thorough analysis of the sentencing considerations applicable in a breach of trust conviction for a police officer. While I will not repeat here what Justice Hill says at paragraphs 29-43 of her sentencing decision, it is my view that Justice Hill thoroughly canvasses the varied and serious sentencing considerations the court must consider when faced with sentencing a police officer for a conviction for breach of trust.

[149] In short, Justice Hill speaks about police officers occupying a special position of trust and their duty to uphold the values of the justice system that is dependent on the fidelity and honesty of a police officer. Justice Hill comments on the position of police officers able to commit offences without arousing suspicion, their obligation to serve the public when investigating crime, and the self-defeating argument that those who are before the courts facing a breach of trust charge will inevitably be able to produce good character references because it is that character profile that allows the individual to attain that position of trust.

[150] Justice Hill's thorough review of the principles and considerations that a sentencing judge should bear in mind when sentencing a police officer is persuasive.

[151] The next Crown case is *R. v. Sandhu*, [2013] O.J. No. 6325, where Justice Moore of the Ontario Court of Justice sentenced Mr. Sandhu following a trial.

[152] Mr. Sandhu was a police officer with a commendable policing history. On the day in question he attended a massage parlour alone in contravention of his policing protocol to attend these situations with a partner. He was armed when he attended the massage parlour.

[153] While at the massage parlour, Mr. Sandhu and the masseuse entered a room together and Mr. Sandhu demanded that she perform fellatio. Mr. Sandhu ejaculated into her mouth and she kept his ejaculate on a towel. Mr. Sandhu was identified as the perpetrator through DNA.

[154] Justice Moore's decision involves a lengthy and thorough review of the sentencing principles that apply in determining whether a crime of this nature is suitable for a CSO or real jail. The Crown in the *Sandhu* case sought a jail sentence of sixteen to eighteen months while Mr. Sandhu sought a nine to twelve month CSO.

[155] Mr. Sandhu was 38 years old, married 10 years with a very young child, and he had no criminal record.

[156] Mr. Sandhu and his family had been subjected to intense public scrutiny and he was stigmatized in the media.

[157] Justice Moore found that Mr. Sandhu's crime was one where Mr. Sandhu, as a police officer, took advantage of his authority against a helpless vulnerable victim. He

found that the fact that Mr. Sandhu was a police officer helped to facilitate his commission of the offence. He also found that it was unlikely that Mr. Sandhu would commit further crimes in the future.

[158] In articulating his decision to impose a real jail sentence of fifteen months on Mr. Sandhu, Justice Moore said this:

[106] The public must be protected from those who breach or break the law while being in a position of authority to uphold the law.

[107] In his position as a police officer, and while on duty, Mr. Sandhu breached the considerable trust that we, as a society, feel is necessary to allow the police to do their job and maintain a just and civilized society.

...

[109] In his position, cloaked with the power of the public trust, Mr. Sandhu should know, or should have known, that severe consequences would flow from his conduct. Other police officers must be reminded of that. It is important that his conduct be denounced by the court.

...

[111] I know Mr. Sandhu will suffer even further should he go to jail, more than the average citizen. Any time in real jail would be particularly harsh, and even dangerous for him. I have considered and reflected on the option of imposing a conditional sentence in this case.

[112] Having considered all the circumstances of this case, I find that the imposition of a conditional sentence would not be consistent with the purpose and principles of sentencing as set out in the Criminal Code and the relevant case law. The conduct engaged in by Mr. Sandhu would not be adequately dealt with by way of a conditional sentence. The gravity of the offence is at the high end, taking all the circumstances into account, and Mr. Sandhu bears full responsibility of his actions. He and he alone is culpable. His conduct must be denounced, and other must be deterred from committing such acts.

[159] Justice Moore's decision was upheld on appeal.

[160] In *R. v. Von Seefried*, [2017] O.J. No. 1094, Justice Felix was tasked with sentencing a police officer after Mr. Von Seefried was convicted, following a trial, of

sexually assaulting a female passenger of a vehicle the officer had pulled over for a traffic stop.

[161] Briefly, Mr. Von Seefried pulled over a vehicle, took the female passenger out of the vehicle and back to his police cruiser. He placed the female passenger into the back seat of his cruiser, got in and kissed her, touched her breast over her bra, and touched her vagina. The victim then went back to her boyfriend's vehicle, told her boyfriend what had happened and Mr. Von Seefried was charged.

[162] Justice Felix believed the complainant and disbelieved Mr. Von Seefried and entered the conviction.

[163] At the sentencing hearing the Crown sought a jail sentence of eighteen months and the defence sought twelve months incarceration. So the decision is not that helpful in analysing the fitness of a CSO versus a real jail sentence in these kinds of serious breach of trust cases involving police officers. However, it is yet another sentencing decision where the court imposes a lengthy jail sentence against a police officer with no criminal record, a solid family background, and an unblemished policing career. The court ultimately imposed a sixteen-month jail sentence.

[164] The last Crown authority I will review is the case of *R. v. Bracken*, 2005 SKPC 64, a decision of Judge Turpel-Lafond from the Saskatchewan Provincial Court.

[165] The facts in *Bracken* bear a striking similarity to the facts in the case before me.

[166] Mr. Bracken was a senior police officer assigned to lead an investigation into allegations of sexual crimes committed by a neighbour against a girl when she was 12

to 14 years old. At the time of the allegations against Mr. Bracken she was 17 years old.

[167] As the investigation wore on and a relationship developed with the victim, Mr. Bracken began asking her sexually intrusive questions and the topics of conversation initiated by Mr. Bracken with the victim were highly sexualized.

[168] As the criminal proceedings progressed, Mr. Bracken would drive the complainant to meetings with the prosecutors and return her home. The conversations initiated by Mr. Bracken became more intensely sexual, including direct pressure on the complainant for sexual contact with Mr. Bracken. On the date in question, Mr. Bracken and the complainant were driving in his police vehicle and they stopped. After another of his sexualized questions of his victim, Mr. Bracken reached over and squeezed her breast several times.

[169] The complainant went to the prosecutor handling the charges against her former neighbour and asked for the charges to be dropped so that she would not have any further contact with Mr. Bracken. The prosecutor reported the incident to Mr. Bracken's Sergeant, and following an investigation into the allegations against Mr. Bracken, he was charged with sexual assault. Mr. Bracken entered a guilty plea on his first court appearance.

[170] The *Bracken* case is instructive because Judge Turpel-Lafond gives a very thorough and robust analysis of the fitness of a CSO in a case with very similar factual circumstances to the case at bar.

[171] Judge Turpel-Lafond notes that Mr. Bracken must have known from his extensive experience working with sexual assault victims that his victim would have enduring scars from the childhood sexual offences committed against her by her neighbour.

[172] She points out that Mr. Bracken, as a senior police officer investigating the sexual assault of his victim, he held an important position of trust over his victim.

[173] In discussing where Mr. Bracken's sexual assault of his victim falls on the spectrum of sexual assaults, Judge Turpel-Lafond says this,

[48] The characterization of the sexual assault before the Court as at the low end of the spectrum needs to be carefully considered. The case law does anticipate an analysis of the particular facts in each sexual assault but that analysis is not confined to an assessment of the physical acts. The evaluation of the sexual assault requires a consideration of the subjective impact of the assault on a victim, and the inference that a reasonable person would know the impact of their actions. Trial judges do not base their decision on the spectrum solely on the physical acts of sexual assault, placing touching at the low end and intercourse at the high end of a spectrum.

[49] Sexual assault sentencing requires a broader contextual analysis. The leading case of *R. v. Sandercock* (1984), 1985 ABCA 218 (CanLII), 48 C.R. (3rd) 154 (Alberta Court of Appeal), as applied in Saskatchewan, requires the trial judge to evaluate the intensity of the behaviour of the offender and whether or not he knew the victim would suffer emotional or psychological injury, or physical injury. Where the touching might seem to be less aggressive or forceful, but there is a "contemptuous disregard" for the feelings and personal integrity of the victim, the assault must be classified as at the higher end of the spectrum. Context matters a great deal and hence the characterization of the facts before the Court as at the "low end" is difficult to accept.

[174] Judge Turpel-Lafond reached this conclusion concerning the gravity of Mr.

Bracken's sexual touching of his victim:

[51] Mr. Herman, on behalf of the Crown, argued that characterizing the sexual touching in this case at the low end of the spectrum is only possible if it is viewed in a vacuum. Mr. Herman's submission is correct. The impact of Sergeant Bracken's conduct on a sexual assault victim could not

be assessed at the low end of a spectrum of harm given his position, his knowledge, and the fact that the victim was struggling with depression, anxiety and poor self-worth. He demonstrated a contemptuous disregard for her personal integrity

[175] After a lengthy review of applicable case law in which courts articulate whether or not a CSO meets the sentencing principles in cases of sexual assault and breach of trust, Judge Turpel-Lafond reached this conclusion:

[46] The sentencing principles and case law in Saskatchewan are not amenable to a conditional sentence of imprisonment for this offence, or for persons in positions of authority who breach their unique responsibilities in committing a sexual assault.

[176] It is my view that many of those comments by Judge Turpel-Lafond would apply equally to Mr. Fisher.

[177] In the end, Judge Turpel-Lafond concluded that the appropriate range of sentence on the facts before her was between nine and eighteen months and she imposed a nine-month jail sentence.

B. Defence Authorities

[178] Mr. Fisher, through counsel, has placed before me a number of cases where judges have imposed intermittent jail sentences and/or a CSO and I will review those cases now.

[179] In *R. v. O.R.(F.)*, 2016 BCPC 223, Judge Harris of our court imposed a jail sentence of ninety days to be served intermittently followed by two years of probation on an offender who carried on a sexual relationship with the teenage daughter of his former partner.

[180] Mr. O.R. began a relationship with the victim's mother when the victim was eight years old. Their relationship ended when the victim was twelve, but the adults maintained a good relationship as they had two children of their own.

[181] Just prior to her 18th birthday, the victim went to a high school dance and contacted Mr. O.R. for a ride home. On the ride home, Mr. O.R. parked the car and the two engaged in sexual contact: Mr. O.R. touched the victim's vagina and the victim masturbated Mr. O.R. to ejaculation.

[182] The two carried on a consensual intimate relationship for a few months following the victim's 18th birthday. When the victim's mother learned of the relationship she reported it to the police. Mr. O.R. co-operated with the police investigation and gave a statement.

[183] Mr. O.R. had no criminal record, he entered a guilty plea, and he had the support of his family. The aggravating circumstances included the fact that Mr. O.R. was in a parental role and breached that trust as well as the fact that the victim was under 18 - although just barely - when the sexual activity started.

[184] The Crown sought a six-month jail sentence and the defence sought the mandatory minimum jail sentence of fourteen days incarceration.

[185] Judge Harris reviews a number of authorities and concludes that the range of sentences for similar offences and similar offenders was ninety days served intermittently to three years in jail.

[186] In *R. v. Chen*, 2017 BCSC 1680 Justice Murray sentenced a well-regarded piano teacher for sexually touching five of his students over their clothes, under their clothes,

and kissing - including French kissing - over a period of seventeen years. The victims ranged in age from 11 to 19 years old.

[187] Mr. Chen denied the allegations and took the case to trial and was convicted.

[188] On sentencing, the Crown sought a jail sentence in the range of forty to forty-four months. Mr. Chen sought a ninety-day jail sentence for one victim followed by a lengthy CSO with respect to the remaining four victims.

[189] Justice Murray notes that a CSO is available with respect to the four victims and briefly refers to the applicable sentencing principles. She notes that the crimes were a “serious breach of trust” in circumstances where the parents of the victims had entrusted their children into the care of Mr. Chen to be safely taught how to play the piano. Also aggravating Mr. Chen’s crimes was the number of victims and the length of time over which he committed the offences.

[190] Justice Murray notes that Mr. Chen had no criminal record and was well regarded in the community. She notes that he had been on bail for three years with no difficulties and that he was a low risk to reoffend. Mr. Chen was 69 years old and suffered major depression. He had the support of his family. His case garnered wide spread media coverage which shamed his family.

[191] In reviewing the case law, Justice Murray notes the Supreme Court of Canada’s comments in *R. v. Proulx*, [2000] 1 S.C.R. 61 and then turns to the case of *R. v. Gallacher*, [1991] B.C.J. No. 762 (C.A.) which lists the factors a court should consider in determining if “exceptional circumstances” exist such that general deterrence and denunciation do not require a jail sentence, but rather incarceration pursuant to a CSO.

[192] With reference to general deterrence, the court in *Gallacher* said this:

11. As for general deterrence, the involvement with the media when this matter first arose, and the stigma and shame attached would be, as stated in *Gallacher*, a powerful deterrent to people in the general community.

[193] After considering the *Gallacher* factors, Justice Murray imposed a period of seventy five days incarceration followed by twenty-one months to be served in the community by way of a CSO. While not explicitly saying so, I infer that Justice Murray concluded that Mr. Chen's circumstances were exceptional and denunciation and general deterrence did not require a jail sentence for the four victims where a CSO was available.

[194] The B.C. Court of Appeal has recently upheld Justice Murray's decision.

[195] And lastly, in *R. v. Nicholson*, 2018 BCSC 515, Madam Justice Brown sentenced an Abbotsford police officer for three incidents of serious breaches of trust involving drug cases.

[196] Briefly, Mr. Nicholson's breaches of trust included:

- a) Encouraging a police informant to provide false information in a drug investigation;
- b) Mr. Nicholson gave false information to a fellow officer that he had received from the informant; and
- c) Mr. Nicholson counselled an accused while transporting him to the police detachment about how important it was that the police not find any drugs on him or in his home and offered the prisoner an opportunity to make a phone call if needed.

[197] There is no doubt that Mr. Nicholson's breaches of the public trust in him as a police officer are extremely serious. He took steps as a police officer to foil drug investigations.

[198] However, Justice Brown's decision is focused more on the law concerning joint submissions. In the case before her, the Crown and Defence proposed a joint submission of a seventeen month CSO involving house arrest and a curfew.

[199] Justice Brown mentions the compelling mitigating and aggravating factors, but does not refer to any of the sentencing principles applicable in breach of trust cases. Also, she does not refer to any case authorities where the court has considered the fitness of a CSO in a breach of trust case involving a police officer.

[200] In my view, the *Nicholson* case does not provide me much guidance in determining a fit sentence for Mr. Fisher because it contains no legal analysis beyond a discussion concerning the law of joint submissions, and I do not have a joint submission before me in the case at bar. There is no analysis by Justice Brown on how a CSO on the facts before her meets the sentencing principles and objectives in a breach of trust crime committed by a police officer.

DETERMINATION OF A FIT SENTENCE FOR MR. FISHER

[201] The factors in this case that I find most persuasive in guiding my decision as to what is a fit and proper sentence for Mr. Fisher are as follows:

- a) The vulnerability of A. and B. and Mr. Fisher's intimate knowledge of those vulnerabilities;
- b) The profound breach of trust by Mr. Fisher given those vulnerabilities, Mr. Fisher's position of authority as a police officer, the close and in many respects dependent relationship his victims had with him, and Mr. Fisher's

role in this case as a senior investigator tasked with trying to save A. and B. from the ravages of their sex trade work for Bannon and Moazami. In the context of all those facts, Mr. Fisher violated their personal and intimate security by kissing A. and B., all in the context of a significant power imbalance between Mr. Fisher and his victims;

- c) The fact that this was not an isolated incident. The offences occurred four times over three to four months with two different victims, and towards the end, the crimes were occurring close in time with each victim;
- d) The fact that with A., Mr. Fisher knew she was seventeen and he knew by virtue of his significant tenure as a police officer working in the field of sex crimes and underage prostitution rings that A. could not consent to his sexual advances;
- e) I view the nature of the sexual activity in this case as very intrusive even though the activity was limited to kissing, including French kissing. I am of this view because of the significant impact these crimes had on the victims, their profound vulnerability to Mr. Fisher, the fact that Mr. Fisher had worked hard to investigate Bannon and Moazami and at some level could be seen as having saved A. and B. from their exploitation in the sex trade, and then he crossed an indelible line and victimized them again;
- f) The fact that Mr. Fisher pleaded guilty to these charges and spared A. and B. having to come to court and testify which most certainly would have re-victimized these young ladies who have lived lives as victims since the time they were children;
- g) The fact that Mr. Fisher has no criminal record, although as a police officer that does not weigh as heavily, but more significant is his nationally and internationally recognized contributions to policing, and to hockey and in a significant way, women's hockey;
- h) The fact that he has received awards and has been recognized around the world for his hard work fighting not just crime, but some of the worst crime including international gangs. He has been invited to speak internationally to police forces because of his expertise as an investigator. The accolades and recognition he has received are well deserved for such an accomplished police officer; and
- i) The support he still has from his former colleagues, friends and most importantly his children.

IS A CSO A FIT SENTENCE?

[202] There is no mandatory minimum sentence for the breach of trust convictions and I am satisfied that having Mr. Fisher serve his sentence in the community would not pose an unacceptable risk to the public.

[203] However, taking everything into consideration, it is my view that a CSO does not adequately reflect the primary sentencing principles of denunciation and general deterrence in determining a fit sentence in this case.

[204] It is my view that house arrest is not sufficient to denounce or deter others when a sexual crime involves a breach of trust.

[205] Not only was Mr. Fisher a police officer, he was a senior member of the CEU. Moreover, he was the lead investigator in the Bannon investigation and a significant member of the investigative team in the Moazami investigation.

[206] Mr. Fisher's crimes, like Mr. Bracken's offence, did not involve a momentary lapse in judgment. His crimes occurred on four separate occasions over the course of three or four months. His first kiss with A. occurred on the very first occasion he met alone with her in contravention of the known CEU policy not to meet alone with female victims and witnesses. In fact, all four of the kissing incidents occurred in situations where Mr. Fisher either arranged to meet alone with A., or he chose to meet alone with B. And three of the sexual acts occurred in the span of just over two weeks from November 21 to December 7, 2015.

[207] The gravity of these offences, the degree of Mr. Fisher's culpability and the level of his moral blameworthiness call out for his incarceration.

[208] Anyone who, in similar circumstances, breaches the public's trust, and the trust of such desperate and vulnerable individuals like A. and B., must know that they will be sent to prison for a significant period of time.

[209] I find that there are not "exceptional circumstances" in Mr. Fisher's case as was determined by Justice Murray in the *Chen* case.

[210] For those reasons I find that a CSO would not be a fit sentence for Mr. Fisher.

THE LENGTH OF THE JAIL SENTENCE

[211] As for the length of Mr. Fisher's jail sentence for the breach of trust convictions, I note that in *Bracken*, Judge Turpel-Lafond determined that the range of sentence in very similar circumstance to the case at bar was nine to fifteen months. In *Bracken*, there was one incident of squeezing the victim's breast. There was one victim. There was similarly seriously intrusive conduct given the vulnerability of the victim and the significant trust relationship between Mr. Bracken and his victim. Mr. Bracken's relationship with his victim was much more overtly sexualized given the nature of the conversations he was initiating with his victim leading up to his offence. Mr. Fisher's sexual offending against A. occurred on three separate occasions over the course of three or four months. Mr. Bracken took immediate responsibility for his actions. Mr. Fisher did not. This led the VPD to enlist A. and B. as police agents to see if Mr. Fisher would admit what he had done. Ultimately, however, Mr. Fisher accepted his responsibility for his crimes just as Mr. Bracken did.

[212] In *Von Seefried* there was one incident and one victim, but again seriously intrusive sexual behaviour. But in *Von Seefried* there was not the same relationship

between Mr. Von Seefried and his victim - he was a stranger to his victim but he used his authority as a police officer to force his victim into the back seat of his police cruiser where the sexual assault occurred. In Mr. Fisher's case he did not use his authority as a police officer to enable his offences against A. and B., rather he used his well-developed relationship with these women to facilitate his offences against them.

[213] In my view, based on the authorities I have reviewed and summarized in this decision, a jail sentence of between nine and fifteen months for Mr. Fisher's convictions for his crimes against each of A. and B. would be a fit sentence and would fall within the range of sentence established by the authorities.

[214] I am further of the view that because Mr. Fisher's crimes occurred at separate times against separate victims, the sentences should run consecutively.

CONCLUSION

[215] Keeping in mind the totality principle and the significant mitigating circumstances in this case I impose the following sentences:

- a) On information 219368-4C, the conviction for the sexual exploitation of A. I impose a jail sentence of ninety days in prison - being the mandatory minimum jail sentence for that offence. The ninety days of imprisonment will not be served intermittently.
- b) On Count 1 of the Indictment 219386-3C, the conviction for breaching the trust of A. by kissing her for a sexual purpose I impose a jail sentence of twelve months in prison. The two prison sentences relating to A. on 219368-4C and 3C will run concurrently with each other.
- c) On Count 2 of the Indictment 219386-3C, the conviction for breaching the trust of B. by kissing her I impose a jail sentence of eight months in prison to be served consecutively to the other jail sentences I have imposed.
- d) Therefore, the global jail sentence I am imposing today is a twenty-month jail sentence.

- e) At the conclusion of your jail sentences I order that you be placed on Probation for a period of two years. The terms of your probation are the following:
- i. You must keep the peace and be of good behaviour.
 - ii. You must appear before the court when required to do so by the court.
 - iii. You must notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or your probation officer of any change of employment or occupation.
 - iv. You must report in person to a probation officer at #103-80A 6th Street, New Westminster, BC by 3:00pm on the first business day following your release from custody, unless you have obtained, prior to your release, written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your probation officer.
 - v. When first reporting to your probation officer, you must inform him or her of your residential address and phone number.
 - vi. You must have no contact or communication, directly or indirectly, with A., B., C., or D.
 - vii. You must not go to or be within 200 meters of any residence, school or workplace of A., B., C., or D.
 - viii. You must attend, participate in, and successfully complete any intake, assessment, counselling or program as directed by the probation officer. Without limiting the general nature of this condition, the intakes, assessments, counselling or programs may relate to sex offender treatment.
 - ix. You will not engage in any activities, volunteer work, or paid employment that requires you to be in a position of trust over any females under the age of 18 years.

[216] In addition to the sentences I have imposed I impose the following ancillary orders:

- a) Pursuant to section 490.012 and 490.013(2)(a) of the *Criminal Code*, with respect to Count 1 on 219368-4C I order you to register for a period of 10 years with the Sex Offender Information Registration Act;

- b) Pursuant to section 110 of the *Criminal Code* I impose a firearm prohibition for a period of 10 years;
- c) Pursuant to section 487.051(1) of the *Criminal Code* with respect to Count 1 on 219368-4C I order you to produce a sample of your DNA for registration with the DNA databank; and
- d) With respect to the Victim Fine Surcharges in the total amount of \$500.00, I will hear from counsel as to whether Mr. Fisher would like time to pay or have the fines payable forthwith and in default he will serve 1 day in jail for each fine those days to be served concurrently with the jail sentences I have imposed.

The Honourable Regional Administrative Judge R. Hamilton
Provincial Court of British Columbia