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| IN THE COUNTY COURT OF VICTORIA | RevisedNot RestrictedSuitable for Publication |

AT SHEPPARTON

CRIMINAL JURISDICTION

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| SAM HUDDART (A PSEUDONYM) |  |

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| JUDGE: | HIS HONOUR JUDGE STUART |
| WHERE HELD: | Shepparton |
| DATE OF SENTENCE: | 14 June 2019 |
| CASE MAY BE CITED AS: | DPP v Huddart (a pseudonym) |
| MEDIUM NEUTRAL CITATION: | [2019] VCC 878 |

EX TEMPORE REASONS FOR SENTENCE

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Subject: Criminal law

Catchwords: Indecent assault – incest – guilty plea

Sentence: 6 years imprisonment, 3 year non-parole period

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Mr A. Moore | Ms R. Yousuff |
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| For the Accused | Mr C. Terry | Mr B. Barmer |

HIS HONOUR:

1. Sam Huddart[[1]](#footnote-1), you have pleaded guilty to three charges of indecent assault, Charges 1, 3 and 4. Charges 1 and 3 carry a maximum penalty of three years' imprisonment and in relation to Charge 4 the maximum penalty was increased for that period of time to five years' imprisonment.
2. You have also pleaded guilty to one charge of incest which at the time carried with it a maximum penalty of 20 years' imprisonment. This is an exceptional case in terms of its age. This offending occurred when you were aged between 30 and 35 years old and dates back to periods between January 1966 and March 1971. Thus, the charges are approaching half a century old.
3. At the time of the offending your victim, your adopted stepdaughter, was aged between 12 and 16. At the time of her disclosure and statements to the police she was aged 64. You are now 84 years old.
4. You married your first wife and moved into a three bedroom house on a block in northern Victoria. This was a block that had been allocated to your father after his war service. You built a house on that orchard property which your father, and then you, owned and operated.
5. Your first wife brought with her a daughter, the complainant, who was two years of age at that time. From that marriage you had three boys, spaced in two year intervals. She was the eldest and had her own bedroom, whilst the boys shared a bedroom.
6. In the ensuing years there was a considerable upheaval in the orchard industry with overproduction resulting in tree pulling in an attempt make the industry viable by increasing prices. In any event the orchard became unviable and it was sold some time in 1972.
7. In order to bring more money into the household your wife, the mother of your victim, undertook employment during the evenings at a factory, a café and a hotel, which left you at home, purportedly, to look after your stepdaughter and her brothers while she went to work at night.
8. The first charge of indecent assault occurred between January 1966 and January 1969 while she was watching either television program Number 96 or The Box with you. You let her into the master bedroom of the premises telling her, 'You are going to like this'. In the bedroom you pulled her pyjama bottoms and underwear off, you lifted her up and in a manner threw or dropped her onto the bed, though as I gather not in any way violently. You then positioned her so that her legs were dangling off the bed. You then bent over her, licked her vagina and she could feel your tongue entering her vagina.
9. The second charge is a charge of incest and it is a representative charge. How I deal with a representative charge I will come to later. On this occasion you put your hands on her hips and pulled her towards you. She then felt your penis penetrating her. She felt a sharp pain and then you used your hands to push and pull her hips as you moved your penis in and out of her vagina.
10. It is that incident associated with the earlier indecent assault which is the subject of the charge of incest and it is upon that incident that I must sentence you. The summary of prosecution opening upon plea, Exhibit 1, then eludes to a series of other incidents. You are not to be sentenced for those other incidents as will be revealed in the quotation from a relevant authority of the Court of Appeal.
11. During the course of discussion with counsel I was initially unsure of whether or not this in fact was a representative charge or a rolled up charge representing a number of different incidents, the significance of which is considerable, but it was made plain to me by the learned prosecutor,
Mr Moore, and assisted by your counsel, Mr Terry, that it is only in relation to that first incident that you are to be sentenced.
12. There is an appearance of this charge being a rolled up one because of the reference to a number of other specific incidents set out in Exhibit 1, summary of prosecution opening upon plea. It is not necessary for my purposes to rehearse this charge of incest by reciting from that exhibit anything further, though I have taken those other incidents into account in the appropriate way when dealing with the first incident as a representative charge.
13. It is convenient at this point to continue on in relation to Charge 3, another charge of indecent assault. This charge relates to an incident which occurred between March of 1967 and March of 1968 when your victim was approximately 13 years of age.
14. She was asleep in her bedroom and awoke to find you sitting on top of her chest with your knees on either side of her shoulders. You were rubbing your penis against her lips and nose and saying things like, 'Lick it, suck it, open your mouth'. She could not move her arms due to your knees being on either side of her shoulders.
15. When she opened her mouth to say something you pushed your penis into her mouth. She felt like your penis was being pushed down her throat. Your pubic hair was all around her face and mouth causing her to gag. She cannot remember what happened after this point.
16. The final charge is also a charge of indecent assault. This assault occurred between March of 1970 and March of 1971 when she was approximately
16 years old. You had picked her up from a party that she had attended. On the way home you pulled the car over and started grabbing her breasts, both over and under her clothing. That is not the subject of any charge. You also put your hand up her miniskirt and in between her legs and was touching her vagina over her underwear. You were saying, 'Come on, you can do it', or 'I’ll tell your mother you were drinking'. She responded bravely, 'Go for it'.
17. When you then asked her if, 'She really wanted her mother to know', she replied, 'I do, everything'. You immediately stopped and drove home without saying anything. This was the last time you sexually offended against your stepdaughter.
18. It was plainly her reaction to your observations about telling her mother that stopped you. This was explicit, in my view, in her response, 'I do, everything', that you were at risk of being exposed. Thus a man in mid-30s was thwarted by a 16 year old girl from further offending.
19. Your victim met her first husband when she was 16 years old and at the age of 18 she proposed to him and married him, thus facilitating her move out of what was the family home. She tried to tell her mother on a few occasions about the abuse at the time it was happening but sadly, and somewhat typical for the age, her mother did not believe her, and further told her that she was illegitimate and so not to bring more shame upon her. The mother of the victim.
20. So she did not persist with her complaint at that time. In the first 12 months since meeting her husband to be she told him that you had sexually abused her from the age of 13. Though, typically, she did not tell details of the abuse save to say that you had vaginally raped her with your penis.
21. Her husband to be, stated that he never confronted her parents about the allegations. Whereas her mother says that he did, stating that she later spoke with you about the allegations and you responded not to believe him as he was an alcoholic.
22. So things lay for decades. This is a scenario that frequently comes before this court. Years, sometimes decades, here almost 50 years after the last event she came forward to tell of the horror that you subjected her to. In late November 2017 Detective Leading Senior Constable Peter Evans was tasked to investigate her allegations.
23. On Monday 26 February 2018 she attended at Wodonga police station where she was supplied with a digital voice recorder. When she attempted to make a pretext phone call to you the phone call was answered by your present wife and the pretext call was unable to be conducted.
24. She took the digital recorder home with her that day and so on the following day, 27 February 2018, at approximately 11:30am, she again telephoned you and conducted a 15 minute phone call. Only eight minutes of that conversation was recorded as the batteries ran flat. In that conversation you apologised to her saying it should never have happened, but then you said that you had not touched the victim, but if you did it was out of love for her.
25. What a cynical response that was. It had nothing to do with love, it had everything to do with your sexual gratification. That was how you started, with an apology and an evasion. Fortunately, over time you have come to a full realisation of the gravity of your offending. That is further demonstrated by a second pretext phone call that was made on 16 March last year at approximately 1:12 in the afternoon.
26. During that call you stated that you were very sorry and ashamed for what had happened and that what had happened could not be changed. You agreed that you knew that the incident where you entered the victim from behind wearing a condom was particularly degrading and told her that you had tried to make it up to her by assisting her at times even though you knew that you would, 'Probably never make it up to what it was'.
27. Three days later on 19 March 2018 police attended upon you in a car park at Shepparton Private Hospital. During the course of this meeting the conversation was recorded. You told police that it was just, 'one of those things that happened many years ago', that you were probably, 'taking it out on another', that it was, 'prevalent behaviour back then', and not as, 'obnoxious', as it is now.
28. I make these observations. It is a sad thing to say that it is as prevalent now as it probably was in the 60s and 70s, if not before. Parliament had already passed a maximum penalty for incest of 20 years, more recently increasing it to 25 years, the second highest maximum penalty Parliament prescribes aside from life imprisonment, demonstrating how, to use your word, 'obnoxious' incest is and has always been regarded.
29. That day the meeting in the car park was followed by you being taken to the Shepparton police station where in the early afternoon a record of interview was conducted. This record of interview is précised in Exhibit 1, the summary of prosecution opening, and I quote from it.
30. In question 62 to 70 and 162 to 165 you said that you would not have a clue what turned it into a sexual relationship and you cannot remember that part as it is probably something you did not want to remember, but that you supposed that it happened and that it only went for a short time when she was 13 or 14.
31. At question 78 you further stated that her mother and you were not getting on too well. In questions 86 and 279 to 284 you further indicated that your victim had called and spoken about the sexual offending in passing and that you said that you were sorry and you had not said sorry before as you had not seen her as the victim as she did not get along with your second wife.
32. In answers to questions 99 to 117, 167 to 187, 271 to 274 and 388 you said you were not having sex with her all the time and was just 'peeping tomming' and watching her bathe and undress in front of you. That in those days it was not out in the open and in those days you did not understand it was against the law to have sex with your stepdaughter. That it escalated to stroking and touching her body and she could not react whereas you were the boss and you were not aroused and was just taking it out of her because of her mother. That you could not remember how many times it happened as it happened when you were angry or got angry and it happened for three to four years when she was 12 to 15 years old.
33. Further in answers to questions 123 to 135 you said that your wife had a night job for about three seasons and in questions 132 to 142 that there was a trip to the snow. At questions 188 to 195 you said that you did not penetrate her and that she had told you during the phone call but you were not having sex with her.
34. At questions 196 to 235, 265 to 268 and 258 to 269 you said to police when they put the allegations to you you denied all the allegations stating that you might have rubbed her breast but did not have sex with her and that the allegations were very perverse. That she must have it in for you a bit and that you were not denying it out of embarrassment and it did not happen. Although then you went on saying that it possibly could have happened but you did not think so.
35. At question 236 you said that these days it is their world against the males and their world prevails and there is no way that it happened, in referring to sex in exchange for being the adult supervisor on a snow trip, one of the particulars of Charge 2.
36. At questions 240 and questions 400 to 413 you continue by saying that half the allegations never happened and some of it is untrue and you just watched her and washed her and felt her breasts and that type of thing. That she might just want to get at you or get back at someone else like your first or second wives.
37. You continued at 264 that she had told you that she had told her mother about the abuse but her mother did not want to know. At question 337 and 341 you said that you had kept it a secret for a while simply because you were a little bit ashamed of yourself and it should not have happened but it did and happened quite a lot in other families too.
38. Finally around question 371 you further stated that you agreed that you were caressing her around the breasts whilst watching TV but you cannot remember touching her specifically on her vagina.
39. You there plainly attempted to minimise what you had done to her. You had endeavoured to excuse yourself and you denied emphatically that you had engaged in any penetrative activity with her at all. You even went so far as to suggest that you were not aware of the gravity of your offending. Utter nonsense and evasions.
40. She was your stepdaughter, you had adopted her. You had cared for her as her father from the age of two. When she was prepubescent and pubescent you abused her in her own home, in her own bed, in places where she was entitled to feel safe. You, for your sexual gratification, committed these four offences.
41. There is reference in the materials, in her statement and in your statements to the police of other sexual activity. I carefully do not take into account any other offending other than what is before me and it is necessary to ensure, in particular in relation to Charge 2 of incest, that you are sentenced in accordance with the law.
42. This, as I have observed, is a representative charge. In the joint judgment of Kyrou and Weinberg JJA in *Crouch (a pseudonym*) *v The Queen* [2019] VSCA 30 at paragraph 36 set out the principles in relation to the sentencing on a representative charge, saying:

'Insofar as they are relevant to the present case, the principles relating to sentencing for a representative charge may be summarised as follows:

1. A representative charge is a charge for an offence which is representative of other instances of the same offender in the same manner on other occasions, within the specific period of the offending. Where a representative charge is laid, the offender is charged for the offending that subject of that charge and is not separately charge for the other instances of the offending which are represented by that charge (‘represented instances of offending’).
2. The offender fails to be sentenced for the offending the subject of a representative charge but not for the represented instances of offending.
3. The represented instances of offending are not aggravating circumstances of the offending the subject of a representative charge.
4. The maximum penalty for the offence that subject of a representative charge applies to that charge. The represented instances of offending do not have the effect of increasing the maximum penalty. The sentence that is imposed for a representative charge must be just in all of the circumstances. It cannot be disproportionate to the nature and gravity of the offence the subject of the representative charge.
5. The fact that a charge is a representative charge precludes any moderation in sentence that may have been warranted if the offending the subject of that charge has been as isolated incident.
6. The fact that a charge is a representative charge enables the court to consider the offending the subject of that charge in its wider context. This includes the court’s assessment of the nature and gravity of that offending, the offender’s moral culpability for that offending and the impact of that offending on the victim.
7. The fact that a charge is a representative charge may inform the court’s assessment of the weight to be given to sentencing considerations, such as denunciation, protection of the community, specific deterrence and the offender’s prospects of rehabilitation.
8. There is not rule that the sentence for an offence the subject of a representative charge must be higher than for the same offence that is not the subject of a representative charge. However, if all other things are equal, the considerations set out in (a)-(e) above may result in a higher sentence for a representative charge.
9. The number of represented instances of offending is relevant to the exercise of the sentencing discretion. As a matter of common sense, the considerations set out in (e)-(g) above are likely to warrant a higher sentence for a representative charge that is representative of 100 represented instances of offending, compared to a representative charge that is representative of two represented instance of offending. However, that does not mean that it is appropriate for a sentence to be increased in proportion to the number of represented instances of offending. That is because the court must impose a sentence for a representative charge that is just in all the circumstances and is no disproportionate to the nature and gravity of the offending the subject of that charge. The maximum penalty will also provide a yardstick for determining what is an appropriate sentence in all the circumstances.’
10. Here there are four other instances of incest. As is plain, I cannot sentence you for those four other instances. I sentence you only on that first instance, but they inform me of the level of your moral culpability.
11. Further, that instance of incest was not one in isolation and nor has that mitigating matter been put forward by Mr Terry. Quite the opposite. He has properly acknowledged that the other four instances set the context, set the scene, as it were, for a proper understanding of your moral culpability in relation to the one instance, which is the first instance, the subject of Charge 2.
12. You at the time were a man in your 30s. She, as I have already observed, was a young girl. This was grave offending. Your moral culpability was complete. You knew precisely what you were doing. You were determined in this act of sexual penetration.
13. It also informs me in relation to other matters which I will come to such as denunciation and the need for specific deterrence, your prospects of rehabilitation and protection of the community, though other matters inform those matters as well. Again, I will come to those specific sentencing considerations at a later time.
14. So I turn to the victim impact statement. This was plainly offending which has greatly affected your stepdaughter throughout the entirety of her life. I do wish to recite the many and varied ways in which your offending has affected her and continues to affect her. Plainly as she writes, 'This has impacted on my life greatly'.
15. This offending occurred, as I have already observed, between 1966 up until early 1971. Insofar as it is possible, equal justice requires that the sentence that I impose today would, as best can be done, be the sentence that would have been imposed approximate in time to the offending.
16. The precise manner in which that is achieved was considered again in the Court of Appeal in *Carter (a pseudonym) v The Queen* [2018] VSCA 88. In the joint judgment of Weinberg, Beach and Hargreaves JJA, their Honours deal with the principles articulated in *R v Stalio* [2012] 46 VR 426.
17. In paragraphs 53 and following Their Honours write:

'In *Stalio v The Queen*, this Court considered whether, in the context of delay between the time of offending and the time of sentencing an offender, the Court could take into account sentencing practices at the time the offence was committed. The Court accepted that those sentencing practices should be taken into account as one of the factors in the sentencing synthesis — not as the ‘current sentencing practices’ referred to in s 5(2)(b) of the Sentencing Act 1991, but because the sentencing practices at the time of the offending were relevant to arriving at a sentence which was just in all the circumstances. This was necessary to ensure that the principle of equal justice was adhered to:’

1. They then quote:

'The principle of equal justice requires that regard be had to sentencing practices at the date of the offence when sentencing occurs after a substantial lapse of time. In *Lowe v R*, Mason J stated:

Just as consistency in punishment — a reflection of the notion of equal justice — is a fundamental element in any rational and fair system of criminal justice, so inconsistency in punishment, because it is regarded as a badge of unfairness and unequal treatment under the law, is calculated to lead to an erosion of public confidence in the integrity of the administration of justice. It is for this reason that the avoidance and elimination of unjustifiable discrepancy in sentencing is a matter of abiding importance to the administration of justice and to the community.’

1. The court then continued:

'The court in *Stalio* continued:

 It would be wrong for a prisoner to be sentenced to a substantially higher sentence than an offender who committed like offences at or about the time of the offences in issue, *simply* *because of the lapse of time.*’

1. Their Honours then continued:

'The following matters should be noted about the above statement. First,  *Lowe* involved parity between co-offenders – where the principle of equality was obviously relevant – and *Stalio* did not. Second, when read as a whole, the decision in *Stalio* does not (as the applicant contends) require a sentencing court when sentencing occurs after a substantial lapse of time of the offending. *Stalio* required only that ‘regard can be has to sentencing practices at about the time of the offending for the purpose of ascertaining just punishment in accordance with the principle of equal justice. The weight to be given to this factor in any given case will depend upon its own circumstances, which will usually involve more than ‘simply … the lapse of time’.

In this case, there is more than the simple lapse of time. The applicant was interviewed in 2007, at a relatively early time after the offences, and presumable denied them. Has he admitted the two offense which he has since been found guilty of at that time and pleaded guilty, he would have been sentenced according to sentencing practices which then prevailed.

This approach to *Stalio* is consistent with the subsequent treatment of this issue in *Bradley v The Queen*, and, more recently, *Thrussell (a pseudonym) v The Queen,* where this Court (Maxwell P, Santamaria JA and Beale AJA) summarised the effect of *Stalio* in this regard in terms that:

‘the concept of equal justice’ requires *regard to be had to* sentencing practices at the time of the offence if those practices can be demonstrated to have required the imposition of a materially lesser sanction for like offences than current sentencing practices would impose for the offence.

In *Bradley v The Queen,* this Court (Maxwell P, Weinberg and Tate JJA) considered a sentence for murder imposed about 32 years after the offence. The sentencing judge moderated the sentence somewhat to allow for some measure of equal justice ‘as required by *Stalio’*. The Court said this approach did not involve error.

The applicant contends that the principles stated in *Stalio* have the effect that the sentencing judge should have, and this Court must, sentence the applicant in accordance with prevailing sentencing practices in about 2008, shortly after the applicant was first interviewed in relation to the subject offending. As a fall-back position, the applicant contends that the decision in *Stalio* required, at least, that the sentencing in this case be moderated to recognise the delay since the time at which a trial would ordinarily have been held if he had been charged following interview in 2007 and the time he was in fact charged in 2015 (about seven years). For the reasons discussed above, the applicant’s fall-back position should be accepted, and his principal submission rejected.’

1. And thus the fall back position that I moderate the sentence to recognise the delay in time from that time so long ago than I would otherwise impose. I had a deal of discussion with Mr Terry and also Mr Moore about how I should so moderate the sentence. It struck me that in order to achieve such moderation I should adopt a cautious approach, a conservative approach, to the sentence that I impose, it not being possible to know what current sentencing practices were back in the 60s and 70s.
2. Current sentencing practice of course, in this, would be but a consideration. Approaching the matter in that way achieves the moderation that is required in order to ensure equal justice is achieved in sentencing you. Upon sentencing you to imprisonment on Charges 1 and 2, which I intend to do of course, you are to be sentenced as a serious sexual offender on Charges 3 and 4.
3. Thus on Charges 3 and 4 protection of the community is the principal sentencing factor I must take into account though appropriately it is not suggested by the prosecution that a disproportionate sentence should be imposed upon you. There is a certain artificiality in this aspect of the sentencing process as Charge 2, the charge of incest, is by far the more serious offence than are Charges 3 and 4.
4. In a most helpful plea Mr Terry put forward the mitigating factors and they were in my view overall powerful ones. Despite your equivocation and your evasions and your denials it is now plain to me that you are truly remorseful and truly insightful.
5. This arises not simply because of your pleas of guilty which demonstrate further evidence of your remorse, but you have written a letter, a brief one as I understand it, to your victim of apology. The references which I will come to all speak to your remorse and your insight. Your early pleas of guilty are therefore further evidence of such remorse as I have said, but your early pleas of guilty are of particular moment in this case for it has spared your victim the harrowing experience of having to give evidence at a committal hearing and on trial.
6. Doubtless she lives her life with these memories regardless but at least she is being spared that. As the court in *Carter's* case, which I have already referred to observed at paragraph 75:

'On the other side of the comparison exercise, Tewksbury pleaded guilty and the applicant here did not. In incest cases, an accused who pleads guilty is entitled to more than just the usual utilitarian benefits. Importantly, added benefits mitigating the sentence flow from avoiding the victim, and other affected persons such as a parent or other close relative, from having to undergo the extreme stresses of a trial. The benefits flowing to Tewksbury from his guilty plea obviously moderated his resentencing for the incest offences. Thus, although the Court resentenced Tewksbury to five years and five years and six months respectively for the two incest offences, we readily infer that those sentences would have been substantially higher (by about three years for each offence) if, like the applicant here, he had put his victim and her family through the ordeal of a trial.’

1. Not only is there that utility, there is also the utility in the avoidance of a committal hearing and a trial, which would at trial have taken a not inconsiderable period of time.
2. You were born in Kyabram in May 1935. You have a long history of contribution to the community and that community in multifarious ways. I could go through your personal history having already alluded to parts of it but in this particular case a more potent way of approaching your background is to look to a number of matters starting first with you at the age of 84 having an unblemished record. Then quoting from a series of references which, to say the least, are glowing.
3. The first such reference was one from Joseph Lynch[[2]](#footnote-2). He writes, among other things:

'When he came to ask me to write this reference for him he explained in detail that charged he faced, [Sam] was visibly upset when he was going into details of these charges and I felt it must have been very difficult for him to reveal these details to me being a personal friend and colleague for many years.’

1. He later continued:

'I first met [Sam] 65 years ago when he and his family moved [omit], we played football and cricket together for many years. [Sam] became very involved with the football club. He coached the thirds and fourth teams to premierships, he was a committee member for 20 years and served as president for 3 years, he was made a life member of the club in 1974.

[Sam] was also scout master [omit] for 10 years.

I was dairy farming and [Sam] was employed in the herd improvement industry, we had a lot of close contact especially when [Sam] became manager [omit] [and] I was a member of the board for 13 years and Chairman for 3 years.

During this time my contact with [Sam] at meeting and conferences was always professional and amicable.’

1. In the penultimate paragraph he writes:

‘I have always regarded [Sam] as being honest and a friendly ,reliable ,trustworthy and community minded person.’ And concludes, ‘I consider myself to be extremely fortunate to have [Sam] as a loyal friend.’

1. Eduardo Davis[[3]](#footnote-3) writes of you:

‘He is most remorseful for what he has done, so much so that he has had counselling in this matter and has been seeing a Psychologist also. These charges are out of character for [Sam]. He has always been a loving father to his children.’

1. And concludes:

‘Your Honour I ask that you please show remorse in your judgement in this matter for the sake of my friend [Sam] who is in his 80’s and I feel has suffered enough already.’

1. Finally, in the letter of Steven Wyss[[4]](#footnote-4) he writes:

'I have known [Sam Huddart] since 1978 and have had extensive contact with him from 1978 through to 1999, as we worked together in the herd improvement industry. With [Sam] retiring from the company in 1999, I have had less contact with [Sam]. When we started the company, [Sam] was the main instigator in the success of the company. He’s ability to effectively communication with staff and customers, was second to none. [Sam’s] experience showed me the way to conduct one-self within business. With staff, [Sam] was very understanding to their personal needs, such as days off for family situations which would turn up from time to time, such as sick children which needed attention and parents supervision at home. He has a good judgement between balancing the workload, to the customer and the staff needs.

[Sam] has discussed with me what he has been charges with. Yes, [Sam] has shown remorse and is also attending counselling over this matter. I found this to be very out of character to what I witnessed when [Sam] was dealing with staff. Our workplace had over 50% female employees and I never saw any unacceptable behaviour towards them.

1. He later continues, ‘[Sam’s] character within the herd improvement industry would be known as a legend in leadership.’ He concludes, ‘Over the years I have found [Sam Haddart] committed, honest and a hard worker, who is well respected in our community.’
2. I accept that that is so. You are entitled to call to your credit the absence not only of any other criminal offending in the ensuing half century or so but also your contributions to the community, to industry and to your family. You are an intelligent man plainly with a strong work ethic and strong managerial capacities.
3. One matter that I must take into account in all cases is the need for specific deterrence, deterring you from further offending. Given the age of these offences, given the matters that I have just adverted to, it is plain to me that this consideration is of no moment. Your prospects of rehabilitation have already been demonstrated as being excellent.
4. You are insightful, you are remorseful and as I have said you have pleaded guilty. You are a man to be now sentenced at the age of 84. You are then a man of advanced years coming to the twilight of your life. How must I take these matters into account?
5. Again, I turn to another decision of the Court of Appeal in *R v R L P* [2009] VSCA 271 and the joint judgment of Neave, Redlich JJA and Hollingworth AJA where their Honours at paragraph 39 write:

'We approach the conjunction of the appellant’s advanced years and ill health with these propositions in mind.

1. The age and health of an offender are relevant to the exercise of the sentencing discretion.
2. Old age or ill health are not determinative of the quantum of sentence.
3. Depending upon the circumstances, it may be appropriate to impose a minimum term which will have the effect that the offender may well spend the whole of his remaining life in custody.
4. It is a weighty consideration that the offender is likely to spend the whole or a very substantial portion of the remainder of their life in custody.
5. Other sentencing considerations may be required to surrender some ground to the need to exercise compassion to take account of the real prospect that the offender may not live to be released and that the offender’s ill health will make his or her period of incarceration particularly onerous.
6. Just punishment, proportionality and general and specific deterrence remain primary sentencing considerations in the sentencing disposition notwithstanding the age and ill health of the offender.
7. Old age and ill health do not justify the imposition of an unacceptably inappropriate sentence.'
8. Here, for your age, you are in relative good health and thus that concession was made by your counsel appropriately. Your ailments are appropriately medicated. Thus there is no suggestion of your ill health being of moment in regard to my sentencing. But your age is.
9. There is another aspect to this matter and that is the ill health of your wife. It is not put that this is a matter that falls within exceptional circumstances such that I should take it into account in that way. Rather it is put that you as the primary care giver to your wife will be imprisoned and will be concerned for her welfare whilst you are imprisoned and that consideration makes imprisonment for you more burdensome.
10. It is plain to me from the materials that have been provided, in particular Exhibit KR6, which relates to her health and my brief observation of her when adjourning yesterday afternoon. She struggled to stand. So I will moderate the sentence that I otherwise impose in this case, identifying that those concerns that you have and will have whilst you are incarcerated.
11. General deterrence is the principal sentencing factor I must take into account. Deterring others from molesting children, their children, their stepchildren in their care, is the principal sentencing factor. It must be made plain that those who engage in this activity will eventually, upon their trial or upon their pleas, receive stern punishment.
12. There is plainly a need in this case for me to condemn and denounce your appalling sexual misconduct as set out in the four charges. This conduct occurred over a lengthy period of time to your stepdaughter in whose care she was. You knew precisely what you were doing. She had no idea.
13. There is also a need for there to be imposed a sentence which includes just punishment for your offending. I have further taken into account the principle of totality to ensure what the sentences that I pass are in total appropriate and so I sentence you as follows.
14. Would you stand please? On each of Charges 1, 3 and 4 of indecent assault I sentence you to be imprisoned for a period of one year. On the charge of incest I sentence you to be imprisoned for a period of five years. I direct that on Charge 1 four months of the 12 month be served cumulatively upon the base sentence on Charge 2. I direct that eight months of the sentences on Charges 3 and 4 be served concurrently. That produces a total effective sentence of six years' imprisonment and I set a minimum non-parole period of three years.
15. I declare that but for your pleas of guilty it would have imprisoned you for a period of eight and a half years and set a minimum non-parole period of five years. I declare that there is no pre-sentence detention.
16. In so far as registration under the Sex Registration Act you are subject to reporting obligations for life. I direct that you provide a forensic sample pursuant to s.464ZF and I advise you that police are entitled to use reasonable force to obtain such a sample if you resist. Be seated.
17. As you will note, Mr Moore, I have ordered cumulation on the one charge as required and concurrency because of the provisions of the Serious Sexual Offenders Provisions achieving in each case an increase of four months on the sentence on Charge 5.
18. Are there any matters?
19. MR BARMER: Just for the record custody management he has a list of his medication on him.
20. HIS HONOUR: Already done.
21. MR BARMER: So I just wanted to mention that for the record.
22. HIS HONOUR: What is going to happen is the court order will in capitals refer to one of the documents that has been tendered which has all the medications that he is currently on.
23. MR BARMER: Thank you, Your Honour.
24. HIS HONOUR: Thank you for that, Mr Barmer. Anything else?
25. MR BARMER: No, Sir.
26. HIS HONOUR: Mr Moore?
27. MR MOORE: I would like to mention the next matter once people make their way out of court.
28. HIS HONOUR: I think what I will do, Mr Moore, is I will ask - I have got to get the orders signed in relation to this registration. I will show them to you, Mr Moore and Mr Barmer. Mr Barmer, if they are in order if you would be good enough to go to the rear of the court and serve them?
* - -
1. “Sam Huddart” is a pseudonym. [↑](#footnote-ref-1)
2. This is a pseudonym name. [↑](#footnote-ref-2)
3. This is a pseudonym name. [↑](#footnote-ref-3)
4. This is a pseudonym name. [↑](#footnote-ref-4)