

**ONTARIO COURT OF JUSTICE**

**B E T W E E N :**

**HER MAJESTY THE QUEEN**

**— AND —**

**JAMES BOUDREAU**

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Before Justice G. F. Hearn  
Heard on January 25, 2012 and April 13, 2012  
Reasons for Sentence released on May 28, 2012

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**Mr. S. Hamilton** ..... for the Crown  
**Mr. R. Yachetti** ..... for the accused James Boudreau

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**HEARN J.:**

**BACKGROUND:**

[1] The accused came before the court on January 25, 2012 and at that time entered pleas of guilty to two counts of sexual assault. The circumstances with respect to the assaults are historic as the events leading to the charges took place in or about the month of May or June of 1983 and in July of 1984. The facts were read in on January 25, 2012 and an agreed statement of facts with respect to the matters has been marked as Exhibit #1 in this proceeding.

[2] After hearing the facts and making findings, the matters were adjourned for sentencing submissions to April 13, 2012. An electronic technological report was ordered as well as a pre-sentence report. Upon the return of the matters in addition to the technological report and the pre-sentence report both counsel filed books of authorities.

[3] The defence has also filed a sentencing brief containing letters and additional letters have been filed, all dealing with the character of the accused. Further, victim impact statements are before the court.

[4] The victim impact statements are contained in Exhibit #4. In addition, filed as Exhibit #8 is a CD of the victim impact statement of R.V. who is the victim in the July 1984 matter. R.V. was unable to read the statement in court although he was present and wished the court not only to have his written statement but also to hear him read it. On consent that was done by way of an audio recording.

[5] In addition to the various material filed on the return of this matter in April, the defence called a number of witnesses who gave evidence as to the good character of Mr. Boudreau. Submissions followed and the court adjourned to today's date for sentencing.

**CIRCUMSTANCES OF THE OFFENCES:**

[6] There are two charges before the court, each involving a single incident with two separate complainants with the events having taken place in 1983 and 1984. During that period of time the accused was a parish priest at a Catholic church in the City of Guelph and indeed remained a priest within the church until the matters before the court were disclosed in 2010. At that time Mr. Boudreau resigned his position with the church.

[7] An agreed statement of facts has been filed but for the purposes of the sentencing the court will review the facts briefly. With respect to the second count relating to the events in July 1984, the victim in that instance is R.V. who at the time of the event was a few days short of his 18<sup>th</sup> birthday. The accused was 40 years of age at the time and was the priest in the church where R.V. and his family were active members.

[8] In addition to being the parish priest, the accused was considered to be a family friend. The accused and R.V. shared the same birth date and from 1980 on they would celebrate their birthdays together. Usually this involved the accused taking R.V. out to a dinner and movie. On a date in July 1984 the accused picked up the complainant at his home and they went out for dinner. After dinner the accused indicated as it was late rather than watch a movie they could return to the accused's residence which residence was in the rectory.

[9] Once at the home of the accused alcohol was provided by the accused to the complainant and both he and R.V. consumed three to four beers. A movie was watched and during the course of their interaction the accused mentioned the topic of sex to the complainant. He showed him some literature with respect to that and then took the victim to another room in the residence and instructed him to lay on his back for a massage.

[10] At that time the accused placed a sand-filled pad onto the complainant's groin region. This caused the complainant to be confused and shocked but he said nothing. The matter escalated from there and eventually the accused suggested to the complainant that he remove his shirt. The complainant complied, the massage continued and further clothing was removed from the complainant by the accused. The accused then stroked the complainant's penis through his underwear. The complainant was, as noted in the agreed statement of facts, stunned, frozen in fear and still said nothing. The accused removed the victim's underwear and began to masturbate him. The accused then performed fellatio on the

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victim and ultimately the accused had the victim fellate him.

[11] The activity continued until the victim became distraught, began to cry, left the accused's bedroom where a portion of the activity had taken place and put his clothes back on. The accused followed the victim, begging him to forgive him and then provided him with further alcohol. The victim eventually left the residence and began walking home. The accused followed the victim in his vehicle and urged him to enter the vehicle which he ultimately did. He was then driven home.

[12] The matter remained undisclosed for many years until December 2010 when the victim came forward, contacted the police and disclosed the incident. After the disclosure of that particular incident a further victim came forward and that complainant's disclosure has resulted in the additional charge occurring in 1983.

[13] That charge also involved a young person, P.C., who was a student at the Catholic school adjacent to the church where Mr. Boudreau was assigned as the priest. Mr. Boudreau at the time was actively involved with school activities and the victim who was 15 years of age had considered joining the priesthood. As a result of that aspiration, the victim would often seek the advice of the accused as to the process of becoming a priest.

[14] On the day in question the young victim attended at the home of the accused, was invited inside and discussions took place with respect to the priesthood.

[15] The accused then asked the complainant if he had been circumcised and advised the complainant that that was a requirement of becoming a priest. The accused requested that the victim remove his pants to allow him to verify that particular issue as the victim was unsure.

[16] The accused advised the victim that they were alone and the victim reluctantly complied. He pulled down his pants and underwear and at that point the accused got on his knees and took the victim's penis in his hand. He began to manipulate the penis of P.C. but the victim expressed his discomfort and then disclosed that he had been abused recently by a member of "Big Brothers". The accused stopped the manipulation and no further misconduct took place.

[17] Although this particular incident pre-dates the count involving the other victim, this matter was not reported until the first victim came forward and in fact was reported to the police in February of 2011.

### **VICTIM IMPACT STATEMENTS:**

[18] There are two victim impact statements before the court as well as an audio recording of the victim relating to the events of July of 1984. Both statements are compelling and refer to the very significant impact the accused's conduct has had on both victims since the events many years ago. P.C., who was the victim of the incident in 1983 when he was 15 years of age, indicates that the conduct of Mr. Boudreau on the date in question has made it nearly impossible for him to "trust people". He notes that he had been

victimized in another situation involving trust and Mr. Boudreau's actions came at a time shortly thereafter, compounding the issues that the young victim had in trusting authority figures in his life who had betrayed that trust.

[19] P.C. had aspirations to be a priest but abandoned those following Mr. Boudreau's actions. Unfortunately, the impact was such that not only did he abandon the priesthood as a possible calling, he also abandoned his faith and church for many years. He speaks of his vulnerability, his lack of trust in others, his fear of honesty and he puts it best when he states:

“Since that evening in Mr. Boudreau's apartment at the church I have had an ever present fear that has become woven into the fabric of who I am – a fear to trust and a fear that every adult, every person of authority in the lives of my children is a potential abuser.”

[20] Not only has Mr. Boudreau's conduct impacted this victim emotionally, it has also impacted his family life. He acknowledges other factors were in place leading to the breakdown of his marriage but does indicate that his “struggle to trust and be vulnerable” have been significant contributors to the choices that he has made. That struggle was compounded by Mr. Boudreau's actions.

[21] The victim with respect to the July 1984 incident has completed a lengthy written statement and as well the court had an opportunity to hear the victim read his statement by way of audio recording. When one hears that particular victim read the statement it is clear that Mr. Boudreau's conduct some 28 years ago has very significantly affected the life of R.V. He speaks of Mr. Boudreau's act of betrayal and the profound impact it has had on himself, not only personally but also on his relationships and on others in his life. The victim had a close relationship with the accused and, as he states, he had “tremendous gratitude and love, and in one monumental act of selfishness he betrayed all of that and left me in ruin.”.

[22] The impact has continued to be felt by the victim throughout his adult life. It has affected his morality, his self-esteem and his career path. He has moved many times since 1985 looking for a sense of comfort and security and, as he puts it, in the pursuit of happiness, all of which he has been unable to find.

[23] He addresses not only the impact the actions of Mr. Boudreau has had on him but also on his family. He speaks of the legal process and the emotional consequences of coming forward with the disclosure.

[24] Ultimately, he states eloquently that the violation which occurred in 1984 irrevocably changed the person he would become. The conduct of Mr. Boudreau has caused him “confusion, humiliation and despair” and has left virtually every aspect of his life impacted in some form or another in a very negative sense.

#### **CIRCUMSTANCES OF THE OFFENDER:**

[25] The pre-sentence report sets out the background and current circumstances of Mr. Boudreau. In addition, a number of letters have been filed by supporters speaking to his

good character and his admirable service in the various parishes where he served as a priest prior to his resignation. As well, defence has called a number of witnesses who also spoke of Mr. Boudreau in very positive terms and commented on their experiences with the accused. All were aware of the matters before the court, do not condone Mr. Boudreau's conduct in any way, feel compassion for the victims but clearly have stated the very worthwhile things that Mr. Boudreau has otherwise accomplished in his life and how Mr. Boudreau has impacted their personal situations. They indicate, notwithstanding the conduct leading to the charges before the court, their views of Mr. Boudreau have not been altered.

[26] The contents of the letters filed and the evidence presented on sentencing in support of Mr. Boudreau are consistent in the view that Mr. Boudreau was a priest who was understanding, caring and apparently respectful of boundaries. He is described as an individual who has a generous spirit, has garnered the respect of others, is an individual of integrity and who, according to one author, is "one of the kindest people he has ever met".

[27] I accept that Mr. Boudreau performed his duties and responsibilities as a priest consistently in an admirable fashion and that his conduct, save and except for the matters before the court, has impacted the lives of many people in a very positive fashion.

[28] The pre-sentence report filed sets out the details of Mr. Boudreau's antecedents and current situation. Mr. Boudreau is currently 69 years of age. He was attracted to the priesthood at an early age. He is a homosexual who has only recently, as he has noted, "come out of the closet". He, however, states he did not enter the priesthood to mask his sexual orientation but it appears from his comments in his letter of April 6, 2011 filed in the matter that he has struggled with that particular issue. Notwithstanding his sexual orientation, as far as the court is aware he has always acted within acceptable norms in his sexual activities, save and except for the two instances involving P.C. and R.V.

[29] He has a number of physical ailments that he is currently dealing with including diabetes, cholesterol and blood pressure issues, cataracts and prostate issues. The matters before the court have caused him further personal stress, embarrassment, humiliation and he believes that he has signs of depression.

[30] Mr. Boudreau is remorseful and indicates that the matter has haunted him for many years. When disclosure was finally made and the bishop called him he indicates that he knew what the call was about. He currently resides alone, socially isolated, is "terribly ashamed" of his conduct and acknowledges that he "made a mistake".

[31] It is important to note that the comments, both in the statement of R.V. and the pre-sentence report relating to the events allegedly following the circumstances which led to that charge are not accepted by Mr. Boudreau. Specifically, he does not acknowledge that he behaved in the manner which is ascribed to him in the pre-sentence report by R.V. following the assault in July 1984. Further, it is important to note as well that the Crown does not rely on these matters set out within that report nor the statement of R.V. concerning conduct attributable to Mr. Boudreau as aggravating factors.

[32] In addition to the various letters filed on behalf of the accused there is also filed a report from Alan Kaine setting out the results of phallometric testing which was conducted on Mr. Boudreau in November 2011. The results of that testing are not indicative of pedophilia.

[33] Finally, the court has had an opportunity to review the letter filed by Mr. Boudreau and also hear his comments during the course of the submissions on sentence. His comments indicate to the court clearly that he is remorseful and has insight into his conduct.

### **POSITION OF THE PARTIES:**

[34] Defence acknowledges the serious nature of the charges before the court and the aggravating features of the conduct but also points out to the court the various mitigating circumstances here. Defence points out the “great reputation” and “exemplary record” of Mr. Boudreau and the lifetime of humiliation and vilification that he now faces as a result of his conduct. Counsel indicates that Mr. Boudreau’s conduct was a “failure of his humanity”.

[35] Defence counsel submits that in all of the circumstances an appropriate sentence here is one of imprisonment but that that period of imprisonment could be served in the community by way of a conditional sentence. Counsel suggests the appropriate range is twelve to fifteen months for such a sentence.

[36] The Crown emphasizes the aggravating features and specifically the breach of trust in the exploitation of two young victims and submits notwithstanding the dated nature of the matter and the otherwise good antecedents of Mr. Boudreau a period of custody is required in a traditional setting. Counsel for the Crown suggests that general deterrence and denunciation are the appropriate factors that must receive paramount attention by the court and suggests a sentence of imprisonment in a traditional setting in the range of upper reformatory.

### **PRINCIPLES TO BE APPLIED:**

[37] In *Regina v. Hamilton*, [2004] O.J. No. 3252, a decision of the Ontario Court of Appeal Mr. Justice Doherty noted at paragraph 87 as follows:

“Sentencing is a very human process. Most attempts to describe the proper judicial approach to sentencing are as close to the actual process as a paint by numbers landscape is to the real thing. The fixing of a fit sentence is the product of the combined effects of the circumstances of the specific offence and unique attributes of the specific offender.”

[38] Sentencing is not an exact science and trial judges must retain the flexibility needed to do justice in individual cases. Each case must be conducted as an individual exercise. (See *Regina v. Wright*, [2006] O.J. No. 4870, para. 16; *Regina v. D.(D.)*, (2002) 163 C.C.C. (3d) 471, para. 33, both decisions of the Ontario Court of Appeal).

[39] The principles of sentencing set out in the *Code* are set out in s. 718 to s. 718.2. Section 718 reads as follows:

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“718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and 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 acknowledgment of the harm done to victims and to the community.”

**[40]** Section 718.1 states a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

**[41]** The issue of proportionality is a principle rooted in notions of fairness and justice. The sentence must reflect the seriousness of the offence and the degree of culpability of the offender and the harm occasioned by the offence. The court must consider both aggravating and mitigating factors, look at the gravity of the offence and the blameworthiness of Mr. Boudreau and the sentence ultimately imposed must properly reflect in terms of gravity that which the offence generally bears to other offences.

**[42]** Section 718.2 sets out:

“**718.2** A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating relating to the offence or the offender and without limiting the generality of the foregoing,
  - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
  - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.”

**[43]** Also of note, when dealing with offences against children s. 718.01 states:

“When a court imposes a sentence for an offence that involved the abuse of a

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person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.”

[44] The primary factors to be considered here are of course the principles of general deterrence and denunciation. Still, the court must recognize the other principles of sentencing to be considered and also must consider the circumstances of Mr. Boudreau.

[45] In dealing with the issue of denunciation, the objective of denunciation mandates that a sentence must communicate society’s condemnation of the offender’s conduct.

[46] As noted by Chief Justice Lamer in *Regina v. M.(C.A.)*, (1996) 105 C.C.C. (3d) 327 at page 369:

“In short a sentence with a denunciatory element represents a symbolic collective statement that the offender’s conduct should be punished for encroaching on our Society’s basic code of values as enshrined within our substantive criminal law. As Lord Chief Justice Laughton stated in *Regina v. Sargeant* (1974) 60 Cr. App. R. 74 at page 77:

‘Society through the courts must show its abhorrence of particular types of crimes and the only way in which the courts can show this is by the sentences they pass.’”

[47] Further:

“The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instils the basic set of communal values shared by all Canadians as expressed by the Criminal Code.”

[48] The court has reviewed the authorities provided by counsel and other cases and all authorities clearly indicate that sexual abuse of children is to be treated seriously by the courts and denounced. Even where there is an absence of physical violence during the course of the commission of a sexual assault upon a child there still remains the psychological damage done to child victims of sexual abuse which can be profound and devastating. The courts must deal with perpetrators of sexual assault involving children in a way that properly reflects society’s desire to protect children. See *Regina v. Stuckless*, (1998) 41 O.R. (3d) 103, Ontario Court of Appeal.

[49] Dealing with the issue of conditional sentences involving cases of sexual assault, again the Ontario Court of Appeal has indicated in a number of cases it should only be in rare cases that a conditional sentence is imposed in cases of breach of trust involving the sexual touching of children by adults. (*Regina v. G. L.* [2003] O.J. No. 1719 and *Regina v. MacNaughton*, [1997] O.J. No. 4102.) Further, a conditional sentence does not ordinarily reflect the necessary degree of denunciation in cases of sexual abuse of children by persons in a position of trust. (See *Regina v. F.(G.C.)*, (2004) 188 C.C.C. (3d) 68).



[50] It is important to note that the defence seeks a conditional sentence and the Crown has conceded that such a sentence is open for the court to consider. However, although available for consideration, the Crown clearly does not agree a conditional sentence is a fit disposition in this particular case. The matters before the court took place in 1983 and 1984 and, although a conditional sentence is not available at the present time on charges involving sexual assault (see s. 752 *Criminal Code of Canada*), by virtue of s. 11(i) of the *Charter of Rights and Freedoms* the accused is entitled to have a conditional sentence considered in this case as the punishment for the offence of sexual assault has been varied between the time of the commission of the offence and the time of sentencing and the accused is entitled to the benefit of the lesser punishment. Although currently, as noted, a conditional sentence is not available on charges of sexual assault, there was a window between 1996 and 2007 when such a sentence or a lesser punishment was available and the accused here is entitled to have the court consider that particular “lesser punishment”. Both the defence and the Crown agree that such consideration is open to the court.

[51] With respect to the issue of conditional sentences, I note the provisions of s. 742.1 of the *Criminal Code* and the case law that has developed since *Regina v. Proulx*, (2001) 140 C.C.C. (3d) 449. That case law indicates that the conditional sentence regime was enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing. Justice Lamer in *Proulx* notes and states that a conditional sentence is something that is to be distinguished from probationary measures. Probation is primarily a rehabilitative sentencing tool and by contrast Parliament intended conditional sentences to include both punitive and rehabilitative aspects. Therefore, the conditional sentence should generally include punitive conditions that are restrictive of the liberty of the offender.

[52] Restorative justice is concerned with the restoration of the parties that are affected by the commission of the offence. In *Proulx* the court stated:

“Crime generally affects at least three parties: the victim, the community, and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in a manner that addresses the needs of all parties involved. This is accomplished, in part, through the rehabilitation of the offender, reparations to the victim and to the community, and the promotion of a sense of responsibility in the offender and acknowledgment of the harm done to victims and to the community.”

[53] The case law supports the principle that each case must be decided and considered individually. In *Proulx* the court noted as well that even with the presence of aggravating factors which might indicate the need for denunciation and deterrence a conditional sentence could still provide sufficient denunciation and deterrence even in cases in which restorative objectives are of diminished importance. A conditional sentence is a sentence that is capable of achieving the objectives of denunciation and deterrence, particularly in circumstances where the offender is forced to take responsibility for his actions and make reparation both to the victim and the community all the while living in the community under tight control. It is also, however, apparent from the case law that there are situations where the principles of general deterrence and denunciation cannot be adequately met except by a period of imprisonment in a traditional setting.

[54] The court also keeps in mind that Mr. Boudreau is a first offender and as a result the principle of restraint is a matter to be considered as set out in s. 718(2)(e) of the *Criminal Code*. That section effectively states that imprisonment is a sanction of last resort and when imposed should be no longer than is minimally necessary to achieve sentencing objectives in the *Code*. General deterrence then cannot be the sole consideration and appropriate consideration must be given to the rehabilitation of the accused.

[55] Here, Mr. Boudreau has pled guilty to two separate counts of sexual assault taking place approximately a year apart with two separate victims. The court then must also consider the issue of consecutive sentences, all the while keeping in mind that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender and the combined sentence must not be unduly long or harsh.

[56] As noted, both counsel have provided books of authorities and referred to case law during the course of their submissions. A number of the cases provided deal with sentencing of individuals in similar situations to that of Mr. Boudreau. However, the sentences imposed in the various cases ultimately are the result of the specific facts of the offences, the circumstances of the offender before the court for sentencing and the proper application of the principles of sentencing. The range of sentences imposed in various cases is a wide one, from periods of imprisonment to be served in the community to significant terms in the penitentiary. What is certainly clear from the case law provided and reviewed as well as the principles of sentencing set out in the *Code* is that paramount considerations in dealing with issues involving sexual assaults on children and breaches of trust are general deterrence and denunciation.

### **AGGRAVATING FACTORS:**

[57] The aggravating factors in this matter are as follows:

- (1) The accused sexually abused two children, ages 15 and 17, when he was approximately 40 years of age and in doing so also abused a position of trust and authority.
- (2) The sexual assaults were intrusive, involved oral sex on one occasion and only came to a halt as a result of the emotional upset exhibited by both young victims.
- (3) The accused at the time was a parish priest in the church attended by both victims. He was a role model, a trusted friend, confidante and mentor. His relationship with the victims was clearly one of authority but, most importantly, one of trust. A position of trust is founded on notions of safety and confidence and reliability that the special nature of the relationship will not be breached. (See *Regina v. Kyle*, (1991) 68 C.C.C. (3d) 268, Ontario Court of Appeal). Mr. Boudreau's conduct with the two young victims was an egregious breach of that trust.
- (4) The sexual activity took place in the rectory, effectively part of the church

property, and on the occasion involving R.V. involved the accused providing alcohol to the victim. The conduct was deliberate and the accused took advantage of the two victims, one of whom was simply celebrating his upcoming birthday with a trusted and respected friend and one of whom himself was considering entry into the priesthood. Both young victims were vulnerable and impressionable.

(5) The psychological and emotional impact on both victims is readily evident when one reads and hears read their victim impact statements. The harm occasioned as a result of the conduct of the accused has been lifelong and has significantly altered the lives of both victims in many respects.

(6) The accused lived with the knowledge of these two incidents for years without disclosing them and without any concern evident for the victims. The acts were only disclosed when the victims came forward many years later and the accused's formal acceptance both to the court and to the victims only came about when disclosure took place.

(7) Both offences appear to be crimes of opportunity, yet the accused committed the offences one year apart and during that time, notwithstanding the upset shown by P.C. on the first occasion, the accused did not step back and reconsider his actions. Indeed, he then victimized R.V. His degree of responsibility and moral culpability is high.

### **MITIGATING FACTORS:**

[58] The mitigating factors in this matter are as follows:

(1) Mr. Boudreau has no criminal record and comes before the court as a first-time offender.

(2) Mr. Boudreau has pled guilty to the offences and has thereby not only expressed his remorse but also saved the further victimization of R.V. and P.C. by not requiring that they give evidence at a trial and/or a preliminary hearing. It is clear given the nature of the charges and the contents of the victim impact statements that a requirement that either or both victims give evidence would have been a very stressful experience for them.

(3) In addition to indicating his remorse by the pleas of guilty, I am satisfied that Mr. Boudreau is remorseful otherwise. His remorse is expressed in his letter, his comments during the course of the preparation of the pre-sentence report and also by his comments to the court. I accept that he is embarrassed, humiliated and regrets very much his actions. I am satisfied that that remorse is genuine and that it is sincere.

(4) The matters before the court are, as far as the court is aware, isolated incidents which took place a number of years ago. There was no repetition of

the conduct and the actions of Mr. Boudreau represent a gross error in judgment on the two occasions related to the charges. The assessment before the court indicates that there is no evidence to support any finding that Mr. Boudreau is a pedophile and, indeed, there has been no repetition of his conduct since the last event in 1984. He does not in any way represent a danger to the safety of the community.

(5) The events are historical in nature and the delay in reporting is not due to the conduct of Mr. Boudreau. He has led what appears to be an exemplary life since and expresses genuine remorse and acceptance of responsibility. Specific deterrence and rehabilitation are not primary factors to consider in this sentencing.

(6) With respect to Mr. Boudreau's life otherwise, the various letters provided by the defence and the witnesses called clearly indicate that Mr. Boudreau has indeed led an admirable life in the years since the sexual assaults. Ironically, he appears to have performed his duties, responsibilities and fulfilled his position in the church with compassion, understanding and with insight into the difficulties of others, all of which traits escaped him on the days of the victimization of R.V. and P.C.

(7) There have been consequences already in place for Mr. Boudreau as a result of his criminal conduct. He has suffered humiliation, public scrutiny and tendered his resignation from his position in the church. His actions and the resulting disclosure have represented a significant fall from grace for Mr. Boudreau.

**SENTENCE TO BE IMPOSED:**

[59] This is a difficult sentencing. Mr. Boudreau was in a position of trust as a priest, a position which is revered, greatly respected and can and should positively enhance the lives of others. His conduct, however, with R.V. and P.C. was a colossal breach of that trust.

[60] Although there are aggravating features clearly present, there are also mitigating factors to consider. Mr. Boudreau has for many years since these events occurred garnered a great deal of respect for his conduct as a priest in the various parishes where he has served.

[61] I have considered the circumstances of the offender and the circumstances of the offence and again fully appreciate that sentencing is a very individual process. I also appreciate the health concerns and the age of Mr. Boudreau, and that any period of imprisonment will likely be difficult for him. The court recognizes the historical nature of the charges before the court and the only recent disclosure of events some 28 years ago. Still, the court accepts that health issues can be properly addressed by correctional authorities and when considering the dated nature of these events also accepts it is not an uncommon occurrence for disclosure to take place many years after such events for various reasons. Neither of these circumstances on their own represent exceptional circumstances in the

court's view.

[62] The court has given ample consideration to the principles to be applied and the very able submissions of both counsel. Although clearly the range of sentence is within the appropriate range for a conditional sentence and Mr. Boudreau does not represent a danger to the safety of the community, the court finds in this particular situation a conditional sentence would not properly address the fundamental principles to be considered. Specifically, the issues of general deterrence and denunciation, in the court's view, can only properly be addressed by a term of imprisonment in a traditional setting.

[63] The mitigating factors here that the court has previously enumerated do not eliminate the need for such a setting, although they do impact, as do the other principles to be applied, on the length of such sentence.

[64] Looking as well at the issue of totality the court finds that the appropriate sentence in this particular case is one of fifteen months imprisonment. That particular sentence will be imposed on the count relating to the victim R.V. and there will be a six month concurrent sentence with respect to the victim P.C. There is nothing in the material before the court to indicate a period of probation would be of assistance to Mr. Boudreau, nor that such a period is required to address issues of community safety. As a result, there will be no period of probation to follow the period of imprisonment.

[65] Ancillary orders have been requested by the Crown and there will be a DNA order made pursuant to the provisions of the *Criminal Code* on both offences which are primary designated offences. Further, there will be an order requiring Mr. Boudreau to comply for a period of twenty years with the *Sex Offender Information Registration Act*.

[66] With respect to the other ancillary orders sought, the court keeps in mind the historical nature of the charges before the court. A weapons prohibition order under s. 109 is a sentence as defined within the *Criminal Code* and having regard to s. 11(i) of the *Charter* previously referred to, although Mr. Boudreau will be subject to such a prohibition order, it will be for a period of five years pursuant to s. 98(1) of the *Criminal Code* as it was in force at the time of the commission of these offences.

[67] With respect to the s. 161 order sought by the Crown, I adopt the reasoning set out in *Regina v. M.E.*, [2012] O.J. No. 1627, where such an order with respect to historical charges was found to be a "sentence" as defined in the *Code* and as statutory authorization for such an order was not in effect when Mr. Boudreau's crimes were committed, as the section was first enacted in 1993, that order is refused.

[68] In summary then, there will be a sentence of fifteen months imprisonment, a DNA order, an order requiring compliance with the *Sex Offender Information Registration Act* and a five year weapons prohibition order. There will be no order under s. 161 of the *Criminal Code*. Victim fine surcharges on both charges will be waived.

**Released: May 28, 2012**

**Signed: “Justice G. F. Hearn”**