QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2013 SKQB 438**

Date: **2013 12 12**
Docket: Q.B.J. No. 68/2012
Judicial Centre: Battleford

BETWEEN:

HER MAJESTY THE QUEEN

- and -

PAUL MARY LEROUX

Counsel:

Michel L.J. Piche	for the Crown
Paul Mary Leroux	on his own behalf

SENTENCING DECISION — ACTON J.
December 12, 2013

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[1] On November 5, 2013 (*R. v. Leroux*, 2013 SKQB 395), I found you guilty of having committed the offence of indecent assault against eight individuals contrary to s. 148 of the *Criminal Code*, R.S.C. 1985, c. C-46, which allows for a maximum sentence of 10 years, and two counts of gross indecency under s. 149 of the *Criminal Code* upon two of the eight individuals which offence allows for a maximum sentence of five years. I addressed the relevant facts in my judgment given at the time of your conviction. I see

no need to repeat them now. Following your conviction, I adjourned sentencing you until this date and ordered a pre-sentence report.

[2] Jennifer Roy, a probation officer, has prepared a pre-sentence report, a copy of which has been provided to both the Crown and yourself, Mr. Leroux. I presume you have reviewed the pre-sentence report.

[3] A majority of the victims have provided the Court with victim impact statements, which were either read aloud by Crown counsel or the individual victim. The victim impact statements are most relevant in setting out the affects of the lifelong struggles that the victims have felt as a result of the actions of you, Mr. Leroux. Many of the victim impact statements are written in an eloquent manner, which reminds the Court of the high level of scholastic ability of most of the victims.

[4] Mr. Leroux continues to deny having committed the offences and reminds the Court that he has already served a 10-year sentence for similar subsequent offences. He points to the fact that he has not reoffended since 1974. As well, Mr. Leroux argued that had the victims gone to the police ten or fifteen years ago when they were applying for financial compensation for the offences for which he is now being convicted, the total previous sentence of 10 years would have, in all likelihood, by including these in the totality, resulted in a total sentence being 12 or 13 years.

[5] Mr. Leroux advises the Court that he has taken every program recommended for a sex offender and completed these with a high degree of success. He has integrated into his community, living at the same address for 30 years and maintained a stable life of continual employment until he retired in 1995 due to his severe rheumatoid arthritis. These facts were confirmed in the pre-sentence report. He argues that a long sentence would be disproportionate, that people do change, and that gays and lesbians

have, particularly in the 1950s, suffered from discrimination, living in shame and fear.

[6] In fixing an appropriate sentence, I am governed by the provisions of ss. 718, 718.01, 718.1, 718.2 and 742.1 of the *Criminal Code*. Section 718 states:

> **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:
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> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
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> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
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> (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.

[7] Special note must be taken of s. 718.01, which is of particular importance in the current circumstances and which states:

> **718.01** — When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

Section 718.1 states:

> **718.1** — A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Section 718.2 states in part as follows:

> **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 circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
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> ...
>
> (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,
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> ...
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
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> ...
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
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> (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.

Although ss. 718.01 and 718.2(a)(ii.1) were not part of the *Criminal Code* when the offences occurred, they do represent a codification of the common laws that existed at the time.

[8] Because there is the possibility of a conditional sentence, s. 742.1 becomes relevant. It states:

> **742.1** — If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if
>
> (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of

sentencing set out in section 718 to 718.2;

(b) the offence is not an offence punishable by a minimum term of imprisonment;

(c) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life;

(d) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more;

(e) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that

(i) resulted in bodily harm,

(ii) involved the import, export, trafficking or production of drugs, or

(iii) involved the use of a weapon; and

(f) the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:

(i) section 144 (prison breach),

(ii) section 264 (criminal harassment),

(iii) section 271 (sexual assault),

(iv) section 279 (kidnapping),

(v) section 279.02 (trafficking in persons — material benefit),

(vi) section 281 (abduction of person under fourteen),

(vii) section 333.1 (motor vehicle theft),

(viii) paragraph 334(a) (theft over $5000),

(ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling-house),

(x) section 349 (being unlawfully in a dwelling-house), and

(xi) section 435 (arson for fraudulent purpose).

[9] As stated by Popescul C.J. in *R. v. McLachlan*, 2013 SKQB 332, [2013] S.J. No. 575 (QL), at paragraph 13, that although the current sentencing regime establishes a minimum sentence of imprisonment in s. 153(1.1) of the *Criminal Code*, which would make the offender not eligible for a conditional sentence, s. 11(i) of *Canadian Charter*

of Rights and Freedoms, provides that the offender would be eligible for a conditional sentence since he would have been eligible for one at the time the offences occurred as there was no minimum sentence of imprisonment in ss. 148 or 149 of the *Criminal Code* at the time these offences occurred.

[10] As noted by Popescul C.J. in *McLachlan*, *supra*, at paragraph 14, in approaching the sentencing of the offender, I must primarily concern myself with the denunciation and deterrence of his conduct. I must ensure as best I can that his sentence is proportionate to the gravity of the offence and the level or degree of his responsibility. The sentence must take into account aggravating and mitigating circumstances relating to the offence itself and relating to the offender himself. At the end of the day, the sentence must not be harsher or more lenient than a sentence imposed on similar offenders for similar offences committed in similar circumstances.

[11] In fixing an appropriate sentence, as indicated, I am governed by the provisions of the *Criminal Code* set forth above and the guidance provided by the Supreme Court of Canada in *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, and the Saskatchewan Court of Appeal in *R. v. Laliberte*, 2000 SKCA 27, 189 Sask.R. 190, and by the decisions cited therein. The requirements of Part XXIII of the *Criminal Code* are to be approached in substantially a two-step process described by the Saskatchewan Court of Appeal in *Laliberte*.

Step One

[12] I start with Step One. In accordance with s. 742.1, I must consider the following three factors:

(a) Whether the law prescribes a mandatory sentence of imprisonment for the offences for which you are to be sentenced. If there is, I need

not consider the alternative of a conditional sentence.

(b) If incarceration is not mandatory, then I must consider whether the offences for which the offender has been convicted require a custodial sentence exceeding two years less a day. If the appropriate custodial sentence is one of more than two years' imprisonment, then I must impose the sentence.

(c) Conversely, if incarceration for a period of less than two years is appropriate, then I must consider whether the community would be endangered if you serve your sentence in the community rather than in a traditional institution. If you present a danger to the community, then a sentence of imprisonment must be made. Conversely, if you are not a danger to the community, then I must consider the requirement of the second step as outlined in *Laliberte*.

Step Two

[13] In the second step, I must decide whether a conditional sentence in the community is consistent with the purposes and objectives identified in ss. 718 to 718.2. They are:

(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 acknowledgement of the harm done to victims and to the community.

[14] Under s. 718.2, I am to take into consideration aggravating and mitigating circumstances relating to the offences committed and the offender:

(a) aggravating circumstances

(i) The age of the victims: The victims were young boys at the residential schools.

(ii) Breach of trust: The offender was in a position of authority over his victims.

(iii) The offender is not remorseful.

(iv) The offences occurred more than once.

(v) The offences had a profound affect upon some of the victims.

(b) mitigating circumstances

(i) The offender is now 73 years of age.

(ii) The offender has not reoffended in the last 40 years.

(iii) The offender has taken the sexual offender courses within the criminal justice system and as evidenced, has not

reoffended since 1974, and has worked at controlling his sexual propensities towards boys between the ages of eight and 16. There were no threats, force or coercion against the victims.

(iv) The offender rebuilt his life notwithstanding the incredible public vilification and notoriety which he and his sexual misconduct had attracted as a result of his trial in the Northwest Territories in 1998.

(v) The offender has been publicly embarrassed.

(vi) The offender has already served his 10-year sentence for subsequent similar offences in 1998.

(vii) In spite of having served the above sentence, these offences are a first offence.

(viii) The offender has, since being sentenced in 1998, done everything his sentence has asked of him. He has rehabilitated, not reoffended, and has come back to face these offences and take responsibility for them.

(ix) Returning the offender to prison is not necessary for his personal rehabilitation or deterrence.

(x) The offender scores extremely low in likelihood to reoffend, in fact, almost negligible.

Analysis re Step One

[15] I will now turn to applying the aforementioned law to the facts of the instant case.

[16] With respect to the first requirement of Step One, I am satisfied that no mandatory minimum term of imprisonment of two or more years applies to the offences for which the offender has been convicted.

[17] With respect to the second requirement of Step One, I am further satisfied that the offences in the matter before me do not require a custodial sentence in excess of two years less a day. In that respect, numerous decisions, including the following, guide me:

- *R. v. Doucette*, 2000 SKQB 312, 194 Sask.R. 267. The accused was convicted by a jury of gross indecency against a 15-year-old boy in the 1980s. The accused was a priest and had acted as the complainant's child-care worker. The complainant admitted he initiated the incident that led to the gross indecency charge. The accused was now 60 years old, had no criminal record, experienced health problems and had 70 letters of support. He was sentenced to an 18-month conditional sentence partly because the offence was an isolated event.

- *R. v. Palacios*, 2012 ONCJ 195, [2012] O.J. No. 1535 (QL). The accused was convicted of gross indecency against seven different boys who ranged between eight and 13 years old. The offences occurred between 1980 and 1985. The accused had three previous convictions for sexual assault involving children, but had not reoffended for 30 years. He had undergone extensive therapy for his behaviour and was

supported by his family. He received a conditional sentence of two years less one day, largely in part because of successful treatment.

- *R. v. Mehanmal*, 2012 ONCJ 681, 270 C.R.R. (2d) 271. The accused sexually assaulted two girls who were friends of the family approximately 25 years ago. He received a 12-month conditional sentence and 12 months probation. Mitigating factors included his guilty plea, lack of prior convictions, expression of genuine remorse, positive pre-sentence report and his role as a family provider after the incidents.

- *R. v. K.L.*, 2004 BCSC 797, [2004] B.C.J. No. 1226 (QL). The accused was found guilty of two counts of sexual assault and one count of sexual touching on his granddaughter around 1991. He received an 18-month conditional sentence. He was 75 years old and in poor health and had no previous criminal record.

In addition, an extensive review of similar case law was completed in *R. v. Glasser*, 2011 SKPC 50, 369 Sask.R. 312, wherein the Court stated at paragraph 5:

> [5] The Saskatchewan Court of Appeal has clearly stated that sexual offences committed against children must be considered at least as serious, if not more serious, than sexual offences committed against adults (See *R. v. Revet*, 2010 SKCA 71), and that in such cases, the sentencing objectives of deterrence and denunciation are to be given primary consideration, along with the principle of proportionality (See, for instance, *R. v. M.S.*, 2003 SKCA 33; *R. v. M.G.C.*, 2003 SKCA 83).

The Court went on to summarize similar sentences in similar cases, wherein it stated at paragraph 24:

> [24] I consider the following cases to be the most relevant in this respect:

- *R. v. L.F.W.* (2000), 182 D.L.R. (4th) 90 (SCC). This case involved an accused convicted of indecent assault and gross indecency in relation to offences committed against a younger cousin. The accused was aged 22 to 28 at the time of the offences, while the victim was between 6 and 12. The offender was convicted and sentenced some 20 years after the offences were committed. The trial judge imposed a 21 month conditional sentence, [1996] N.J. No. 330, which was eventually upheld by the Supreme Court of Canada, on a 4-4 split. The comments of Lamer C.J., writing for the four judges who upheld the sentence, and referring to the judgment of the Newfoundland Court of Appeal, [1997] N.J. No. 234, suggest that the Supreme Court, while upholding the sentence, did not exactly give it a ringing endorsement. At paragraph 25, he wrote:

  > I note that Cameron J.A. dissented on the ground that the sentencing judge did not give the principles of denunciation and deterrence sufficient weight, and that a sentence of incarceration was necessary in the circumstances. Were I a trial judge, I might well have agreed with Cameron J.A. and imposed a sentence of incarceration. That said, as an appellate judge, deference must be given to the trial judge's decision.

- *R. v. Freidel*, 2002 SKCA (SentDig) 1. This case involved a 64 year old male who committed one single indecent assault against a 15 year old victim 25 years earlier. The Court of Appeal substituted an 18 month conditional sentence for the 18 month jail sentence initially imposed. I note, however, that this case involved one single transaction, and the offender did not appear to be in a position of trust.

- *R. v. S.L.M.*, 2008 SKQB 474. In this case, the accused was 45 at the time of sentencing. He pled guilty to sexual assaults committed against his second cousins. At the time of the offences, the accused was aged 24 to 27, and the victims were 12 to 15. The offending conduct involved touching, fondling, and digital penetration. Justice Gabrielson rejected a conditional sentence, and imposed an 18 month term of imprisonment. At paragraph 24, he noted:

  > Even with the mitigating circumstances found here and even if the sexual assault did not include intercourse, in my opinion a sentence of imprisonment is necessary to denounce this type of crime upon children and deter others from committing similar acts. Sentences must also be in parity with cases involving similar crimes and circumstances and in this regard I find the facts of this case most similar to the cases of *R. v. H.G.*, [2003 SKCA 88], [2003] S.J. No. 589; *R. v. S.G.T.*, 2006 SKQB 444, 287 Sask.R. 224, and *R. v. B. (K.D.)*, 2008 SKPC 1, 309 Sask.R.

246.

- *R. v. D.(P.)*, 2005 SKCA 60. This case involved a 71 year old offender who pled guilty to four counts of indecent assault and one count of sexual assault, involving fondling of four stepdaughters and one grandniece. Most of the offences occurred between 1958 and 1977, while the last set of offences occurred between 1985 and 1988. A conditional sentence was rejected, and the accused was sentenced to 9 months' imprisonment, followed by 18 months' probation [[2004] S.J. No. 845]. The Court of Appeal upheld this sentence.

- *R. v. M.G.C.*, [2003 SKCA 83]. In this case, the offender sexually assaulted his 12 year old stepdaughter. The conduct involved penetration of the victim's vagina both with the accused's fingers and with an object. The offender had a previous record, including convictions for assault. He was originally given a two year less one day conditional sentence. The Court of Appeal overturned this, and imposed a sentence of imprisonment for one year, taking into account the 5 months the accused had already spent on electronic monitoring, and the 10 and a half months he had spent on judicial interim release. At paragraph 9, Bayda C.J.S. wrote:

  > When one considers the nature of the sexual acts, the relationship between the offender and his victim, the breach of trust which his acts represent, the victim's age, and the offender's age, record and personal history, there is little which commends a departure from the need to denounce this offence with a custodial sentence.

- *R. v. S.G.T.*, 2006 SKQB 444. In this case, the offender was a 36 year old man with no criminal record. He pled guilty to sexually assaulting his adopted daughter. The allegations involved fondling, with no penetration. Justice Scheibel rejected a conditional sentence, and imposed a term of imprisonment of 18 months. At paragraph 19, he wrote:

  > Nevertheless, the accused must be punished for his acts and the punishment must be such that creates a balance between society and the accused.

  The conviction was ultimately upheld by the Supreme Court of Canada (2010 SCC 20), and the sentence upheld by the Saskatchewan Court of Appeal (2011 SKCA 4).

- *R. v. L.W.T.*, 2008 SKCA 17. This case involved an offender who was between the ages of 37 and 43 at the time of the offences. He committed three sexual assaults against victims who were between the ages of 16 and 19. They were young people with whom the offender socialized. The offences involved unwanted fondling and groping. The trial judge

> rejected a conditional sentence. A sentence of 18 months' imprisonment, followed by 18 months' probation was upheld by the Court of Appeal. The Court noted that the significant age difference, the element of planning which appeared to be present, and the prolonged nature of one of the assaults were some of the factors which combined to make the trial judge's decision to reject a conditional sentence appropriate in the circumstances.
>
> • *R. v. J.R.E.*, 2005 SKPC 114. This case involved an offender sexually assaulting his stepdaughter on a number of occasions over approximately a ten year period. In terms of the intrusiveness of the conduct, the assaults were similar to the case before me. The accused had no previous record, was seen as a minimal risk to re-offend, and entered a guilty plea. Judge Benison rejected a conditional sentence, and sentenced the accused to 18 months' imprisonment. Although the offences occurred some twenty years prior to the sentencing, Judge Benison concluded that the mere passage of time was no reason to treat the offender more leniently. At paragraph 26 he wrote:
>
> > Although taking these mitigating factors into consideration, it is my conclusion that, on the facts of this case the principles of denunciation and deterrence must be given precedence over other sentencing considerations to express society's revulsion for such conduct and to protect vulnerable children.

[18] The normal sentence for non-major sexual assaults by a person in authority based upon these decisions would, in most instances, be 18 months.

[19] Having considered all of these authorities, the gravity of the offence, being a violation of a position of trust with the victims, the victims' ages, the intrusiveness of the offender's conduct, the long-term psychological effects on the victims, and remembering that denunciation and deterrence are major considerations, a conditional sentence is inappropriate in the current circumstances.

[20] The Court is also cognizant of the recent decision of the Manitoba Court of Appeal in *R. v. James*, 2013 MBCA 14, 288 Man.R. (2d) 269, wherein it is stated in paragraph 15:

> [15] ...
>
> ...
>
> 5. But, the seriousness of the offences, and the need to address general deterrence and denunciation, do require a further jail sentence. The lapse of time, even with demonstrated rehabilitation, does not make inapplicable the principles of general deterrence and denunciation.
>
> ...

[21] The Court must now proceed to decide whether the sentences for each of the individual counts should be served concurrently or consecutively, and if consecutively, should the totality doctrine apply. The Court must also decide what is the starting point for offences which are considered a major sexual assault, namely, an offence in which there was penetration. After deciding the starting point , the Court must plus or minus aggravating and mitigating circumstances.

[22] The principles to follow in sentencing involving multiple counts is set forth by the Manitoba Court of Appeal in *R. v. James*, *supra*, wherein the Court stated at paragraphs 47 to 49:

> [47] As my colleague Steel J.A. stated in *R. v. Draper (T.G.)*, 2010 MBCA 35, 251 Man.R. (2d) 267, with respect to sentencing on multiple counts (at paras. 28-30):
>
> > Sentencing is a highly fact-based exercise which requires a great deal of discretion on the part of the judge. This court does not wish to fashion principles which are so rigid as to unduly intrude on this discretion. What matters ultimately is the fitness of the sentence, not the route taken.
> >
> > Nonetheless, the procedure adopted in this case with respect to multiple counts is not the procedure outlined by this court in *R. v. Grant (I.M.)* (2009), 236 Man.R. (2d) 54; 448 W.A.C. 54; 2009 MBCA 9, at para. 98; *R. v. Traverse (L.) et al.* (2008), 231 Man.R. (2d) 123; 437 W.A.C. 123; 2008 MBCA 110; *R. v. N.A.S.* [2007 MBCA 97, 220 Man.R. (2d) 43] and *Arbuthnot* [2009 MBCA 106, 245 Man.R. (2d) 244], at para. 18. And see, *R. v. Golden (B.R.)* (2009), 245 Man.R. (2d) 254; 466 W.A.C. 254; 2009 MBCA 107, at para. 87. [And, I would add, others since *Draper*.]

> That procedure is for the sentencing judge to first determine whether the offences in question are to be served consecutively or not. Second, if they are to be served consecutively, then an appropriate sentence for each offence should be determined. Third, the totality principle should be applied to the total sentence thereby arrived at to ensure that the total sentence is not excessive for this offender as an individual. In effect, the sentence must be given a "last look". Fourth, if the judge decides that it is excessive, then the sentence must be adjusted appropriately. In some cases that might require a significant adjustment.

Those comments apply to this case.

[48] It is trite law that the overarching principle of sentencing is the principle of proportionality. That principle is now codified in s. 718.1 of the *Criminal Code*, which provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A sentence not in compliance with the principle of proportionality cannot be a fit sentence.

[49] As Lamer C.J.C. wrote in *R. v. M. (C.A.)* (at para. 82):

> .... In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

[23] The Saskatchewan Court of Appeal in *R. v. Arcand*, 2013 SKCA 75, 417 Sask.R. 140, adopted a similar position, where it stated in paragraph 43:

> [43] ... Richards J.A. in *R. v. Agecoutay*, 2009 SKCA 100, [2009] 11 W.W.R. 606, at paras. 62, 63 and 64, said this about concurrent versus consecutive sentences:
>
> > [62] In considering this submission, it is necessary to begin by emphasizing that a decision to impose concurrent rather than consecutive sentences, or visa [*sic*] versa, attracts considerable curial deference. The Supreme Court described the applicable standard of review as follows in *R. v. McDonnell*, [1997] 1 S.C.R. 948:
> >
> > > [46] In my opinion, the decision to order concurrent or consecutive sentences should be treated with the same deference owed by appellate courts to sentencing judges concerning the length of sentences ordered. The rationale for deference with respect to the length of sentence, clearly stated in both *Shropshire*, [1995] 4 S.C.R. 227, and *M. (C.A.)*, applies equally to the decision to order concurrent or consecutive sentences. In both setting duration and the type of sentence, the sentencing judge exercises his or her discretion based on his or her first-hand knowledge of the case; it is not for an appellate court to intervene absent an error in principle, unless the sentencing

> judge ignored factors or imposed a sentence which, considered in its entirety, is demonstrably unfit. The Court of Appeal in the present case failed to raise a legitimate reason to alter the order of concurrent sentences made by the sentencing judge; the court simply disagreed with the result of the sentencing judge's exercise of discretion, which is insufficient to interfere.
>
> [63] There are two situations where trial judges ordinarily opt for concurrent sentences. The first is where more than one conviction arises from a single criminal "adventure," "enterprise" or "transaction." The reason for imposing concurrent sentences in these situations is because that, when there are convictions for closely related offences, a concern about double punishment arises. See: Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001) at 101.
>
> [64] The second situation where concurrent sentences are typically imposed is where such an approach is necessary to avoid an overall sentence which is unduly long or harsh. This is the so-called totality principle. See: *Criminal Code*, s. 718.2(c).

[24] The Saskatchewan Court of Appeal also considered the totality principle in the decision of *R. v. Drouin* (1994), 125 Sask.R. 49, [1994] S.J. No. 533 (QL) (C.A.), where it says:

> [14] The totality principle is a frequently used tool of a sentencing judge to be sure the total of consecutive sentences is not excessive. In his text *Sentencing*, (3d ed.) (Toronto: Butterworths, 1987), Clayton C. Ruby has this to say of the principle at pages 38 and 39:
>
> > The totality principle requires an assessment of the total impact of the sentence being imposed in relation to the seriousness of his conduct and the impact upon the offender. ... The purpose is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate "just and appropriate". A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of a sentence for the most serious of the individual offences involved, or if its effect is to impose on the offender "a crushing sentence" not in keeping with his record and prospects. [footnotes omitted]
>
> The totality principle has been applied in a number of ways. Sentences which would normally be consecutive have been made concurrent; individual sentences have been made lower than they would normally be to reflect the fact a number of consecutive sentences are involved; or a single concurrent term has been imposed as an appropriate sentence for all the charges under consideration.

[25] The Court does accept that in the multiple counts before it where there are two counts respecting the same victim, both counts relate to the same acts against the same individual in the same time parameters. Therefore, these should be sentenced concurrently. All other counts in which there is one count and one victim should be sentenced consecutively as these are separate individuals, separate circumstances and, in some situations, separate and distinct time parameters. Then, the Court must look at the total sentence one more time and apply the principle of totality.

[26] The Court must now consider what is the starting point for a major sexual assault in Saskatchewan. This varies somewhat from province to province. For example, in Manitoba, the starting point for a major sexual assault perpetrated upon a young person by a person in a position of trust or authority is four to five years, increased or decreased by aggravating or mitigating circumstances. In Saskatchewan, the law in this area has been set at three years and confirmed by the Saskatchewan Court of Appeal as recently as September 2013 in the case of *R. v. Whiting*, 2013 SKCA 101, 423 Sask.R. 177, wherein it reaffirmed the decision of *R. v. Revet*, 2010 SKCA 71, 256 C.C.C. (3d) 159, which sets the starting point for a major sexual assault at three years.

[27] The Court must now decide what is an appropriate sentence on the major sexual assault counts before the Court and in reference to historical sexual assault cases. In *R. v. James*, 2012 MBPC 31, 277 Man.R. (2d) 228, the trial judge noted:

> ***Historical sexual assault cases***
>
> [97] The case of *R. v. R. (A.)*, [1994] 4 W.W.R. 620 (Man. C.A.), was a sentencing on a historical sexual assault. The Manitoba Court of Appeal commented that "the antiquity of the offence is not usually a mitigating feature" and that "denunciation and general deterrence remain the predominant sentencing principles" (at paragraph 33), but went on to say that:
>
> > "Nonetheless, where the delay in the reporting of the offence has not resulted from threats made by the offender, or from other attempts to

> suppress a complaint, the offender may be entitled to a somewhat reduced sentence if he has led an exemplary life during the intervening years and demonstrates genuine remorse. Such circumstances would obviate the need for individual deterrence and time for rehabilitation." (paragraph 34)
>
> [98] Defence counsel provided the case of *R. v. Hands* ([1996] O.J. No. 264, 1996 CarswellOnt 298), a decision of the Ontario General Division. Mr. Hands pleaded guilty to 19 counts of indecent assault against 19 different victims. The offences took place over a five to six year period, between the mid 1960s and 1971. The victims were aboriginal boys ages 12 to 15, who lived at a residential school in remote northwestern Ontario. They were living away from their families, and after school hours, were under the supervision of Mr. Hands. The accused was an army captain of the Anglican Church, which church ran the school. This was an abuse of trust situation. The impact on the victims was devastating and ongoing. The accused had not re-offended. A sentence of four years imprisonment was imposed.

[28] The Court will review some of the sentencing decisions in similar major sexual assaults:

(a) *R. v. James*, *supra*.

The accused pleaded guilty to counts of sexual assault to young men, both of whom were entrusted to him by their families as their hockey coach. Sexual assaults against one lasted for two years. Sexual assaults against the other lasted for five years. The accused had previously pled guilty to two charges in respect to two other victims and received a jail sentence of three-and-a-half years concurrent. The Court of Appeal considered that Mr. James was already rehabilitated and a contributing member of society. But for the totality principle, he would have sentenced him to a further eight years of incarceration, being four years for each major sexual assault. However, this would be a crushing sentence. Accordingly, it was reduced to five years.

Note that Manitoba considers four years as the starting point for a major sexual assault. Saskatchewan considers it three years.

(b) *R. v. A.W.C.*, 2007 SKCA 87, 304 Sask.R. 224.

The offender pled guilty to sexual assault. While intoxicated, the 49-year-old man had sexual intercourse with his 24-year-old daughter without her consent. The offender was originally sentenced to 30 months; however, on appeal it was increased to 36 months. The Court of Appeal took into account the aggravating factors that the victim was the offender's biological daughter, she did not give consent to the sexual intercourse, she had been significantly impacted by the event and that the offender had an unaddressed 30-year alcohol addiction problem. As well, the offender blamed the victim and had a record of domestic violence assaults. The sentence was three years.

(c) *R. v. Revet*, *supra*.

The appellant pled guilty to a charge of sexual assault on a 14-year-old girl and was sentenced to three years' imprisonment. The appellant and the victim worked together. They text messaged back and forth, and the appellant eventually picked up the victim outside her home, drove to the country and had sexual intercourse with her in his vehicle. This happened twice. The victim did not object or resist. The relationship ended when the victim's parents found out. The appellant had no criminal record and was 39 years old, divorced and had a 12-year-old son. He reported feelings of

shame but blamed the offence on external factors, including the victim text messaging him. The Court of Appeal dismissed the appeal, accepting the three-year sentence.

(d) *R. v. J.L.S.*, 2006 SKCA 95, [2006] 10 W.W.R. 642.

J.L.S. was convicted of sexually assaulting his daughter when she was between the ages of eight and twelve years old. He pled guilty and received a sentence of two years less a day plus three years' probation. The Court of Appeal allowed the appeal and imposed a sentence of three years.

(e) *R. v. K.M.*, 2012 SKCA 95, 399 Sask.R. 234.

> The respondent pled guilty to three counts of sexual interference and was sentenced to two years in a penitentiary. The custodial sentence was set aside, and a sentence was fixed at three years. The respondent had sexual relations with three 14-year-old boys who were friends of her similarly aged son. She supplied them with alcohol and a place to drink. The respondent stated that she realized what she did was wrong but, at the same time, she honestly did not know it was against the law when you had two consenting people. She also blamed one of the victims for being the aggressor. A risk assessment showed her overall risk for general reoffending is low.

[29] Based upon the decisions quoted, the sentence for a major sexual assault by a person in a position of trust and authority is three years.

The Counts Before the Court

[30] In considering the counts before the Court:

(a) Count No. 1

With respect to the victim G.J.W., this is not a major sexual assault. The offence involved fondling the victim in his bed approximately five or six times when the victim was between the ages of 13 and 15, for which the Court does sentence the accused to 18 months.

(b) Count No. 3

This is a major sexual assault involving anal intercourse when the victim J.E. was 15 years of age. There was only one incident. The Court does sentence the accused to three years consecutive.

(c) Count No. 4

The offence occurred when the victim T.F. was between the ages of 13 and 15. It was one incident of fondling in the accused's office. T.F. rebuffed further advances of the accused. The Court does sentence the accused to six months consecutive.

(d) Count No. 7

The victim E.G. was approximately 14 years of age. This is a major sexual assault in which the victim was required to masturbate the accused on more than one occasion, and there was a failed attempt at sodomy. The Court does sentence the accused to three years consecutive.

(e) Count No. 11

The victim N.G.M. was approximately 11 years of age. He was fondled in his bed by the accused, who then took him to his office. There was mutual fondling. This was not a major sexual assault. The Court does sentence the accused to 18 months consecutive.

(f) Counts No. 12 and 13

The victim M.J.M. was 13 to 15 years of age. There was fellatio in the office after the victim was provided with alcohol and pornographic literature. It included numerous acts of anal intercourse and was a major sexual assault. The Court does sentence the accused to three years with respect to the indecent assault and one year concurrent with respect to the gross indecency.

(g) Count No. 14

The victim is M.V.P. This is not a major sexual assault. It occurred in the accused's bedroom and involved fondling. The Court does impose a consecutive sentence of 18 months.

(h) Counts No. 16 and 17

The victim G.R.M. was between the ages of 13 and 15 years. There was considerable fondling of the victim by the accused in the victim's bunk and on the bed in the office which escalated to numerous acts of the victim being required to perform fellatio on the accused and mutual masturbation on many occasions. This was a major sexual assault. The Court does sentence the accused to

> three years with respect to the indecent assault and one year concurrent with respect to the gross indecency.

In arriving at these sentences, the Court has considered both the aggravating and mitigating circumstances. Although at first glance there may appear to be more mitigating circumstances than aggravating, the aggravating circumstances are more severe, so as to balance out the mitigating circumstances.

[31] This is a total of 17 years consecutively.

[32] This would be a crushing sentence to the accused and, obviously, long and harsh.

[33] In applying the totality principle to the sentences, the Court has chosen to have the sentences served concurrently in order that the sentence will not be unduly long and harsh. The sentence is based upon application of the principle of totality and is the length of the longest consecutive sentence.

Formal Sentencing

[34] Mr. Leroux, please stand.

[35] Based upon the calculations provided, the seriousness of your offences, society's concern for the sanctity of life and the protection of children who were placed in your care and trust by virtue of your position of authority, I am satisfied that, based on the totality principle and the resulting concurrent sentences, you will be sentenced to three years. You will be credited with 36 days for the time you have spent in remand. Your sentence will be served by you in a federal penitentiary.

Firearms

[36] Pursuant to s. 742.2 of the *Criminal Code*, I conclude that a s. 109 firearms prohibition is applicable in this case.

[37] Accordingly, an order will issue prohibiting the offender, you, Paul Mary Leroux, from having in your possession any firearm, crossbow, restricted weapon, ammunition or explosive substance for a period of 10 years after the time of your release from imprisonment as a result of your conviction. The said order will further prohibit you, Paul Mary Leroux, from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition during the balance of your lifetime.

[38] The offender will have until January 31, 2014, to dispose of the items covered by the aforementioned order.

DNA

[39] Under s. 487.04 of the *Criminal Code*, I authorize peace officers in Saskatchewan to take from you, or cause to be taken by a person acting under their direction, the number of samples of bodily substances that are reasonably required for forensic DNA analysis, provided that the person taking the samples is able by virtue of training or experience to take them by means of the investigative procedures described in ss. 487.06(1) of the *Criminal Code* and provided that, if the person taking the samples is not a peace officer, he or she shall take the samples under the direction of a peace officer.

Sex Offender Information Registration Act (SOIRA)

[40] The Court does not make a *Sex Offender Information Registration Act*, S.C. 2004, c. 10 ("SOIRA"), order under s. 490.012 of the *Criminal Code* as these orders do

not apply to *Criminal Code* offences prior to 1970.

[41] I wish to remind those present of a statement of Vertes J. in the previous *R. v. Leroux*, [1998] N.W.T.J. No. 141 (QL), which is equally apropos in the current circumstances, where he stated at paragraph 7:

> [7] I recognize that the victims in this case have suffered. Any sentence I impose will not absolve that suffering. Indeed, any sentence I impose will likely be seen as deficient in the eyes of the victims. I understand that, but it is very difficult for a court to say what degree of punishment is likely in any particular case to be regarded as sufficient by the victims. We do not impose punishment simply for the sake of retribution.

"M.D. Acton" J.

M.D. Acton