IN THE PROVINCIAL COURT OF SASKATCHEWAN

Date: January 22, 2015 2015 SKPC 012
Information: 24455943
Location: Blaine Lake

Between:

Her Majesty the Queen

- and -

Omer Desjardins

Appearing:

Matthew Miazga For the Crown
George Green For the Accused

Note: ***Pursuant to s. 486.4 of the Criminal Code, the Court made an order directing that the identity of the complainant or a witness, and any information that could disclose the identity of the complainant or witness, shall not be published in any document or broadcast in any way.***

JUDGMENT **B.D. WRIGHT, J**

Introduction

[1] Omer Desjardins has pled guilty to the following charge:

> 1) Between the 1st of April 1978 and the 1st day of September 1978, at or near Marcelin in the Province of Saskatchewan did indecently assault J.W., a female person, contrary to section 149 of the *Criminal Code*.

[2] The circumstances of the offence are not in dispute. J.W., who was 10 years old in the summer of 1978, [redacted] Marcelin, Saskatchewan. Mr. Desjardins was staying at the same house as a guest. During the night, the victim was woken by Mr. Desjardins placing his hand on her bare leg. He then moved his hand up until he touched the bare vagina of the victim. That touching lasted approximately 30 seconds.

[3] At the time of the offence, Mr. Desjardins was a Catholic priest, and was approximately 45 years old.

[4] Furthermore, at the time of the offence the victim was also a practising Catholic, having already taken her first Communion. She was aware of the importance attached to the accused being a priest.

[5] The 10 -year- old victim told [redacted] what had occurred the very next day, but the incident was not then reported to the police.

[6] The victim further indicates that she met and was, on occasion, around Father Desjardins both before and after the incident, including when Father Desjardins was one of the priests presiding over [redacted].

[7] As a priest, the accused was in a position of trust. [redacted].

[8] Although Father Desjardins was born in Marcelin and went to school in Gravelbourg, he has not resided in Saskatchewan for many years. After becoming an ordained priest in 1958, he earned Bachelor of Arts and Bachelor of Education degrees from the University of Ottawa. He then taught at College Mathieu in Gravelbourg from 1960 to 1968. From 1969 to 1971 he was an assistant

pastor at the Paroisse du Sacre - Coeur in Winnipeg. From 1971 to 1974 he returned to College Mathieu in Gravelbourg. He moved to Edmonton in 1978 and has not lived in Saskatchewan ever since. He has resided in Winnipeg, Manitoba since 1986, where he served as Chaplain at St. Boniface General Hospital, a position he held until resigning in 2014 when the charge now before the Court first arose.

[9] Even though the indecent assault was an isolated incident, it has had long-lasting and severe impacts on the victim. She is still experiencing the effects of the assault to this day. J.W. read her Victim Impact Statement in court, and it was very obvious to the Court that she is still extremely upset and angry about what occurred. Her sense of betrayal and anger was very palpable. She noted how Mr. Desjardins was a priest, and that she felt betrayed. She indicates that as a result of what occurred, she does not trust anyone, is always angry, feels alone and unloved, and no longer believes in God. She has struggled with depression, and has entertained thoughts of suicide. She has been unable to work and has not in fact worked since 2008.

[10] At the time this offence was committed, s. 149(1) of the *Criminal Code* provided that anyone who indecently assaulted a female was guilty of an indictable offence and was liable to imprisonment for five years. No mandatory minimum sentence was prescribed, unlike the current provisions in the *Criminal Code* for sexual offences against children.

[11] By virtue of s. 11(i) of the *Canadian Charter of Rights and Freedoms,* an accused is entitled to be sentenced under the terms of the *Criminal Code* that existed at the time the offence occurred. Section 11(i) reads as follows:

> 11. Any person charged with an offence has the right
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> . . .
>
> (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of

> commission and the time of sentencing, to the benefit of the lesser punishment.

[12] Accordingly, I must proceed with this sentencing on the basis of a 5 year maximum penalty, and with no minimum penalty.

Crown's Position

[13] The Crown submits that this is a case of sexual abuse of a minor by a person in a position of trust, and that general deterrence and denunciation must be given primary consideration. The Crown suggests, based on *R v Leroux*, 2013 SKQB 438, that an appropriate disposition in this case would be to impose a period of incarceration of 18 months.

Position of the Defence

[14] The Defence also agrees that the accused should be sentenced to a period of incarceration, but submits that the sentence should be served in the community by way of a 12-month Conditional Sentence Order. In that regard, the Defence refers to a number of decisions, all of which resulted in conditional sentences being granted.

PRINCIPLES OF SENTENCING

[15] In determining an appropriate sentence, I am governed by the principles of sentencing which are set out in sections 718 to 718.2 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:

(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.

Section 718.01, which is of particular importance in the circumstances of this case, 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 the 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,

. . .

(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,

. . .

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposes on similar offenders for similar offences committed in similar circumstances;

. . .

(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.

[16] Although ss. 718.01 and 718.2(a)(ii.1) were not part of the *Criminal Code* when this offence occurred, they do, as has been noted by other courts, represent a codification of the common law as it existed at the time.

[17] Given that a conditional sentence is an available disposition, s. 742.1 of the *Criminal Code* is also relevant. Section 742.1 states, in part, as follows:

> 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 s. 742.3, if
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> > (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 ss. 718 to 718.2;
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> > (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;
> >
> > . . . .

ANALYSIS

[18] Counsel for both the Crown and the accused have provided a number of cases with respect to the appropriate sentence to be imposed in a case such as this. I have reviewed all of those cases, as well as a number of others, and what becomes abundantly clear is that the range of sentences imposed in the various cases is a wide one, from periods of imprisonment to be served in the community, to significant terms in a penitentiary for cases of more serious assaults or for repetitive acts over an extended period of time. While counsel for the accused is correct that in a number of cases similar to the one currently before the Court, conditional sentences have been granted, what is also abundantly clear is that the sentences imposed in the various cases are ultimately the product the specific facts of each case, the particular circumstances of the offender and the proper application of the principles of sentencing.

[19] What also becomes clear from a review of such cases is that there are a number of principles that must be taken into account in cases of this nature. In particular, s. 718.01 requires that in cases of abuse of children, denunciation and deterrence are to be given primary consideration.

[20] The importance of denunciation was discussed by Chief Justice Lamer in *R v M(CA)*, [1996] SCJ No. 28, at para. 81:

> [81] The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. 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 Justice Lawton stated in *R v Sargeant*, (1974), 60 Cr.App.R. 74, at p. 77:
>
> > Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass.

[21] Numerous cases have clearly stated that sexual abuse of children is to be treated seriously by the courts and must be denounced. In *R v Boudreau*, 2012 ONCJ 322, a parish priest who was 69 years old at the time of sentencing pled guilty to two historical sexual assaults. The offences were committed upon two separate victims aged 15 and 17 years, at a time when the offender was 40 years old. In sentencing the accused to 15 months of imprisonment, the Court noted, in part, at para. 48:

> 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.

In *Boudreau,* the Court further stated, in part, at para. 62:

> Although clearly the range of sentences 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.

In *R v Van Tighem*, 1995 CarswellAlta 534, 163 AR 396, a Catholic priest pled guilty to four counts of indecent assault and four counts of sexual assault for incidents spanning 27 years and involving seven female victims aged from 6 to 17 years. All of the assaults were in the nature of touching or fondling. Even though the accused had already been subjected to very public scrutiny as a result of the charges, the Court still emphasized denunciation and imposed a sentence of incarceration of two years less one day, plus probation of two years. The Court stated, in part, at para. 16:

> [16] The significant public recognition and attendant denunciation of his conduct bring home to those who might be inclined to commit similar offences the degree of public humiliation and scorn that may follow. However, the community is also entitled to expect the imposition of sentences which reflect and support a completely denunciatory view of such conduct.

In *R v Bird*, 2008 SKCA 65, a case where the offender sexually assaulted a 14-year-old who was babysitting at his residence, the Court stated, in part, at para. 5:

> [5] On numerous occasions this Court has repeated that sexual assaults on a minor will be treated with the utmost seriousness and subjected to substantial periods of imprisonment even for offenders with no record.

[22] Furthermore, the principles of denunciation and deterrence have been emphasized in many cases involving sexual abuse by offenders in a position of trust. In *R v Kelly,* 1988 CarswellNfld

137, 209 APR 236, a priest pled guilty to minor sexual assaults of two 12-year-old altar boys. The assaults were described as being "fairly low on the spectrum of sexual assault", and involved the accused handling the genitals of the boys outside their clothing. The accused was sentenced to four months in jail and two years probation. The Newfoundland Court of Appeal stated at para. 16:

> [16] Clergymen and teachers must act with the utmost good faith. When they do not, they must pay the price - not only to be deterred themselves, but so that others in positions of trust will also be deterred.

In *R v W(VM)*, 1989 CarswellSask 369, [1989] SJ No. 310, an accused pled guilty to three counts of sexual assault on his two step-daughters, aged 7 and 8, and on his 12-year-old niece. In overturning a suspended sentence and three years' probation, and instead imposing a sentence of nine months imprisonment followed by two years of probation, the Saskatchewan Court of Appeal stated at para. 5:

> [5] Sexual abuse of children cannot be tolerated and the sentence of the Court must adequately reflect society's revulsion for conduct which, in this case, involved a serious breach of trust by a parent.

In *R v S(M)*, 2003 SKCA 33, a 38 year old offender sexually abused his adopted daughter four to seven times over a two - year period, when the child was aged 7 to 9. The incidents escalated from French kissing to digital penetration. The Saskatchewan Court of Appeal set aside a conditional sentence and imposed a period of incarceration of nine months, stating in part at para. 11:

> . . . general deterrence and denunciation play a significant role in relation to sex offences, even those placed along the lower end of the scale of gravity.

In *R v McLachlan*, 2013 SKQB 332, Chief Justice Popescul stated at para. 17:

> [17] Teachers, and other persons in positions of trust or authority toward young persons - those under 18 years of age - must clearly understand that children are completely "off limits" sexually. To violate that trust will almost undoubtedly result in imprisonment.

In *McLachlan*, *supra,* the accused was found guilty of one count of sexual exploitation of a young person contrary to s. 153(1)(a) of the *Criminal Code*. While in a position of trust or authority, the accused, who was then a 33-year- old teacher, had numerous sexual encounters with a 15-year-old student. The offence occurred approximately 19 years prior to the conviction. Chief Justice Popescul sentenced the accused to a period of incarceration of 18 months, to be served in the community pursuant to a conditional sentence order, followed by a period of probation of 12 months. The sentenced was upheld by the Saskatchewan Court of Appeal. However, it is important to note that, in coming to the conclusion that a conditional sentence was appropriate, Chief Justice Popescul noted at para. 18(c)(ii) that there was no evidence that the victim was severely damaged, as had been the case in *R v Elder*, 2010 SKQB 120, another case of a high school teacher who pled guilty to a sexual interference charge involving a student.

In *Elder*, *supra*, Gabrielson J. imposed a sentence of 18 months' imprisonment, plus probation for 12 months. In doing so, the court noted at paras. 15 to 18 that the impact on the victim was extensive, including depression, anxiety, post-traumatic stress disorder, suicidal ideation, self-harm and loathing, sleep disturbances and shame. The court noted the victim still carried a significant degree of anger at the time of sentencing. In the circumstances of that case, Gabrielson J. concluded that a conditional sentence would not be consistent with the fundamental purposes and principles of sentencing.

Finally, in *R v Richard*, 1992 CarswellNS 135, 114 NSR (2d) 428, a 56-year-old priest was convicted on four counts of indecent assault, for having abused a 12-year-old boy over a period of five years. In sentencing the accused to imprisonment for four years, the Nova Scotia Supreme Court stated, in part, at para. 11:

> The church, society and the parents of children placed, or at least in the past, placed complete, total blind faith and trust in clergyman. Those who have breached that trust by engaging in sexual abuse of children must be prepared to pay the price.

[23] In fixing an appropriate sentence, I am also governed by the guidance provided by the Supreme Court of Canada in *R v Proulx*, [2000] SCJ No. 6, and the Saskatchewan Court of Appeal in *R v Laliberte*, 2000 SKCA 27, with respect to the appropriateness of imposing a conditional sentence.

[24] In *Laliberte*, the Court of Appeal set out a two-step process for determining whether a conditional sentence should be imposed. In the first step, in accordance with s. 742.1, I must consider the following:

> a) Whether the law requires a mandatory sentence of imprisonment for the offence for which the accused is to be sentenced. If so, I cannot consider the alternative of a conditional sentence;
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> b) If incarceration is not mandatory, then I must consider whether the offence for which the offender is being sentenced requires a custodial sentence exceeding two years less one day. If so, then I cannot impose a conditional sentence;
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> 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 I allow the offender to serve the sentence in the community. If the offender does present a danger to the community, then I cannot impose a conditional sentence. However, if the offender is not a danger to the community, then I must consider the second step as outlined in *Laliberte*.

[25] In the second step, I am required to decide whether a conditional sentence served in the community is consistent with the purposes and objectives identified in ss. 718 to 718.2. As I have already noted, the objectives in s. 718 are to denounce unlawful conduct, deter the offender and others from committing offences, separate offenders from society where necessary, assist in rehabilitating offenders, provide reparations for harm done to victims or the community, and to promote a sense of responsibility in offenders and acknowledge the harm done to victims and the community. Furthermore, s. 718.01 requires the Court to give primary consideration to the objectives of denunciation and deterrence in cases such as this. Finally, s. 718.2 requires the Court

to take into account any aggravating and mitigating circumstances relating to the offence committed and the offender.

[26] In applying the first step of the *Laliberte* analysis, I have already concluded that at the time of the offence, the law did not prescribe a minimum sentence of imprisonment.

[27] I have also concluded that the offence for which the accused has pled guilty does not require a custodial sentence exceeding two years less one day. In that regard, I have already made reference to a number of cases involving sexual abuse of children. In addition to those cases I have also referred to a number of others:

> *R v Clauson*, 1990 SKCA 74. In that case, a 72-year-old farmer sexually abused the child of a neighbour, whom he frequently looked after. The assaults began when she was age 7 and continued until she was 15, and consisted of touching the breasts and genitals. The Saskatchewan Court of Appeal imposed a sentence of 9 months incarceration, noting that the severity of the impact on the victim and her young age called for a much more severe sentence except for the mitigating factors, including the extreme psychological pressure the accused had been under at the time and his exemplary personal record.
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> *R v G(H)*, 2003 SKCA 88. A 54 year old accused sexually assaulted a victim who was 12 or 13 years old. The victim had been living with her grandmother as had the accused, who was the uncle of the victim. The victim had complained about stiff and sore legs from playing soccer and the accused encouraged her to let him "smudge" her. On one occasion during the "smudge", the accused had the victim lower her shorts to her belly button. He then continued to lower her shorts and underwear and inserted his fingers into her vagina. He then left and went into his own bedroom. The accused had no prior record, and was originally granted an 18 month conditional sentence order. The Saskatchewan Court of Appeal found the sentence to be demonstrably unfit and indicated that a sentence of two years less one day would have been fit. The accused was given credit for the period of one year he had spent on the conditional sentence and a sentence of one year imprisonment was imposed.

R v Doll, 2014 NWTCA 3. The accused was convicted of sexual interference with a 5 or 6 year old daughter of a friend, while babysitting the victim. The accused touched the victim's vagina on two separate occasions and the victim on one other occasion for a sexual purpose. The Court of Appeal imposed a sentence of two years imprisonment, followed by three years of probation, taking into account the nature of the touching and its limited duration.

R v S(RN), 2000 SCC 7. A 52-year-old accused was convicted of sexual assault and invitation to sexual touching for incidents which occurred when he was between 46 and 50 years old. The victim was his step - granddaughter who was between the ages of 5 and 8 when the incidents occurred. The incidents involved fondling of the vagina, but no penetration. The accused also had the victim touch his penis on two or three occasions. A sentence of nine months incarceration was imposed. The Supreme Court of Canada noted at para. 18, in part:

> With respect, I do not think that a nine-month conditional sentence was a fit sentence, in light of the relevant sentencing considerations, including the gravity of the offences committed and the high moral blameworthiness of the respondent. The impugned acts occurred repeatedly over a period of approximately five years. The respondent abused the trust of a very young child, despite clear indications from the complainant that she did not like what he was doing. He remained unrepentant and continued to deny that the offences took place. The amount of denunciation provided by a nine-month conditional sentence was clearly insufficient in the circumstances to signify society's abhorrence for the acts the respondent committed, despite the fact that his liberty was restricted by the conditions imposed.

R v Leroux, 2013 SKQB 438. An accused priest was found guilty of eight counts of indecent assault on males and two counts of gross indecency. The incidents ranged from fondling to oral sex and anal intercourse. The victims were residential school students, and were between 13 and 15 years of age. The accused had not re-offended since 1974, and had previously served a 10 - year sentence for similar offences, although the offences he was being sentenced on were his

first offences chronologically. The Court noted that some of the offences constituted minor sexual assaults. The Court undertook an extensive review of case law at para. 17, reviewing a number of cases involving sexual abuse of minors, including a number of the cases relied on by counsel for the accused in this case. After conducting that review, the Court concluded at para. 18:

> [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.

In *R v W(LF)*, 2000 SCC 6, a 55-year-old accused with no previous record, was convicted of indecent assault and gross indecency committed against his cousin. The offences involved a series of occurrences during the period when the accused was 22 to 28 years and the victim from 6 to 12 years. The offences involved forced acts of masturbation and oral sex on the accused. He secured the victim's compliance and silence by telling her that he had a gun. A 21 - month conditional sentence was imposed at trial, and after an appeal by the Crown to the Newfoundland Court of Appeal was dismissed, the case went to the Supreme Court of Canada. The Supreme Court was evenly split on the fitness of the conditional sentence. Half the judges expressed reservations but favoured upholding the sentence on application of the standard of review. The other half favoured setting aside the conditional sentence notwithstanding the constraints of the standard of review. Madam Justice L'Heureux-Dubé, who spoke for those who would have set aside the conditional sentence, held it was unfit and did not answer adequately to the objectives of denunciation and deterrence, and did not give adequate effect to the fundamental principle of sentencing. Interestingly, Chief Justice Lamer, who wrote on behalf of the judges who upheld the sentence on application of the standard of review, made reference to the dissenting judgment of Cameron J.A. in the Newfoundland Court of Appeal, and noted, in part, at para. 17:

> [17] Cameron J.A. noted that the sexual assault of children is abhorrent to Canadian society and that society's condemnation of such offences must be communicated in the clearest of terms since they involve a very high level of moral blameworthiness.

Chief Justice Lamer also commented, in part, at para. 25:

> [25] 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.

This lack of a "ringing endorsement" for the sentence upheld by the Supreme Court of Canada in *W(LF)*, was noted in *R v Glasser*, 2011 SKPC 50, at para. 24.

[28] Upon review of the above cases, I note that the sentences have ranged from short terms of imprisonment, to terms of imprisonment in a penitentiary. However, I am satisfied that for a case involving a single, isolated incident of sexual touching for a brief period of time, a custodial sentence exceeding two years less one day is not required.

[29] I must next consider whether the community would be endangered if the accused is permitted to serve his sentence in the community. In that regard, I note that Father Desjardins is 82 years old, and has no criminal record apart from this offence. The Pre-Sentence Report describes him as a very low risk to re-offend. More than thirty-five years have passed since the commission of this offence, and during that time he has not been in trouble with the law. I am satisfied that allowing Father Desjardins to serve his sentence in the community would not endanger the community.

[30] As a result, the criteria for the first step in the *Laliberte* analysis have been met.

[31] With respect to the second step of *Laliberte*, I must consider whether a conditional sentence is consistent with the principles and objectives of sentencing identified in ss. 718 to 718.2 of the *Criminal Code*.

[32] I have already noted that in sentencing the accused for this offence, I am required to give primary consideration to the objectives of denunciation and general deterrence.

[33] Under s. 718.2 of the *Criminal Code*, I am to take into consideration the aggravating and mitigating circumstances relating to the offence committed and the offender.

[34] The aggravating circumstances include the age of the victim, who was only 10 years old at the time of the offence. Furthermore, the accused, [redacted], was in a position of trust toward the victim, and abused that trust. Finally, there was a profound effect upon the victim as a result of the assault. The victim has sustained long- lasting damage, which continues to this day.

[35] There are, as has been pointed out by defence counsel, many mitigating factors present in Father Desjardins' particular circumstances. Those mitigating factors can be summarized as follows:

a) the relatively minor nature of the assault;

b) there was no force, threats or coercion involved in the offence or any attempts to suppress it by Father Desjardins after the fact;

c) the offence was committed at a time when the accused struggled with alcohol, but he has since dealt with his addiction and has been sober for over 30 years;

d) he has accepted responsibility for the offence, and entered an early guilty plea;

e) he is sincerely and genuinely remorseful, and has apologized to the victim;

f) the offence occurred more than 35 years ago, and was an isolated incident;

g) the offence is out of character for Father Desjardins, in that he has no other history of offending and has no criminal record;

h) he has had a very positive employment history, but after the charge arose resigned from his position at St. Boniface General Hospital;

i) but for this occurrence, he has led an exemplary life, including much volunteerism and community service;

j) he has been publicly embarrassed as a result of this charge and the resultant media coverage;

k) he is 82 years old and dealing with some health issues attendant with that age;

l) his family and community continue to remain extremely supportive of him; and

m) he is a very low risk to re-offend.

[36] I wish to discuss some of the suggested mitigating factors, and their relevance to my determination on sentence. First, I do not consider that Father Desjardins' alcoholism, and subsequent sobriety, is a mitigating factor. Rather, it is a factor I have taken into account in my assessment of whether permitting him to serve his sentence in the community would pose a danger to the community.

[37] Likewise, I also conclude that the passage of time since this offence occurred is not a mitigating factor. While his lack of any further offences has entered into my consideration of whether the accused now poses a danger to the community, I do not believe the passage of time should entitle Father Desjardins to a more lenient sentence. In *R v JRE*, 2005 SKPC 114, Judge Benison, in sentencing an accused to 18 months' imprisonment for a series of sexual offences committed on his step-daughter more than 20 years prior to the sentencing, noted at para. 25:

> The fact that the criminal activity occurred more than 20 years ago is not a mitigating circumstance that should result in the accused being treated more leniently. It must be borne in mind that the accused asked the victim to keep their secret.

[38] Although in the present case there is no suggestion that Father Desjardins used any force or coercion, or took any steps to suppress what had occurred, the fact remains that the 10-year-old victim reported what occurred to her grandmother the very next day. The fact that it was not reported any further is, I believe, a result of the fact that Father Desjardins was a priest, in a time when priests were much revered.

[39] With respect to the facts that Father Desjardins resigned from his employment and has suffered public embarrassment, I begin by noting the comments at para. 62 in *R v McLachlan*, 2014 SKCA 8, where it is noted that a Court can make too much of the factors of public shaming and loss of employment. In that regard, the Court of Appeal referred to Gilles Renaud, *The Sentencing Code of Canada*, (Markham: LexisNexis, 2009), at pp. 535 to 547. The cases cited therein note that while media scrutiny "may" be a mitigating factor, the adverse publicity must have an inordinate impact on the offender. Publicity is an ordinary incident of our justice system. See: *R v Deck,* [2006] AJ No. 333 at para. 17.

[40] Furthermore, in cases where general deterrence is a paramount sentencing principle, as here, widespread publicity is not a mitigating factor. See: *R v Domke*, [2006] AJ No. 1246 at para. 94.

[41] In the present case, I have reviewed the media coverage included in the defence brief. There is nothing in those reports that is inflammatory or unduly harsh toward Father Desjardins. Furthermore, there is no evidence before me of any inordinate impact on Father Desjardins. As a result, I conclude that the media coverage and any ensuing public embarrassment are not mitigating factors in this case, especially since this is a case where general deterrence is a paramount consideration.

[42] With respect to the suggestion that Father Desjardins' age is a mitigating factor, I conclude that his age, in this case, is not determinative. There are many cases where aged offenders have been sentenced to incarceration despite their advanced age. For example, in *R v Monaghan*, 1988 CarswellBC 1125, an 81-year-old priest was sentenced to 4 years incarceration on 14 counts of indecent assault and 3 counts of sexual assault. While I do not suggest the facts of this case are as serious as those in *Monaghan*, the case illustrates that the age of the offender at the time of sentencing is not the determinative factor.

[43] With respect to the suggestion that the accused's health issues are also mitigating, I note that a reduction in sentence for health issues must be based on current, clear and convincing evidence: *R v Ralph*, 2014 DCSC 467. In the present case, I am not convinced that the evidence provided with respect to the accused's health is of such a nature as to be considered mitigating.

Conclusion

[44] In approaching the sentencing of Father Desjardins, I am required to give primary consideration to the objectives of denunciation and deterrence of his conduct. Any sentence I impose must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and must take into account any aggravating or mitigating circumstances relating to the offence and the offender himself. The sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered.

[45] In this case, although a conditional sentence is an available disposition, and although I am satisfied that permitting Father Desjardins to serve his sentence in the community would not endanger the community, that is not the end of the matter. I must also consider whether permitting Father Desjardins to serve his sentence in the community would be consistent with the principles and objectives of sentencing identified in ss. 718 to 718.2 of the *Criminal Code*.

[46] In cases of abuse of children, the *Criminal Code* requires the Court to give primary consideration to the objectives of denunciation and deterrence. Denunciation is necessary to communicate society's condemnation of the offender's conduct, and the only way courts can show their abhorrence for particular types of crime is by the sentences they pass.

[47] Numerous cases have clearly stated that sexual abuse of children, especially by those in a position of trust is to be treated with the utmost seriousness, and must be strongly and completely denounced. This is the case even for sex offences along the lower end of the scale of gravity, and even for offenders with no record. Sexual abuse of children cannot be tolerated, and the sentence of this Court must adequately reflect society's revulsion for such conduct.

[48] After considering the circumstances of this case, and the various aggravating and mitigating factors which are present, I conclude that a conditional sentence would be inconsistent with the fundamental purpose and principles of sentencing. In particular, given the young age of the victim, the position of trust which was violated by the accused, and the impact on the victim, a conditional sentence would not be proportionate to the gravity of the offence and the degree of responsibility of the offender. Furthermore, a conditional sentence would not adequately provide the required level of denunciation and general deterrence. In my view, any sanction other than imprisonment would not be appropriate.

[49] In *R v Proulx*, *supra*, the Supreme Court of Canada indicated that a conditional sentence may be capable of providing denunciation and deterrence, particularly if onerous conditions are imposed such as house arrest and community service. However, in the circumstances of this case, I am not convinced that any such conditions would adequately denounce Father Desjardins' conduct. First, I have no evidence before me to indicate how confining Father Desjardins to his residence "except when working, attending school, or fulfilling other conditions of his . . . sentence, e.g. community service, meeting with the supervisor, or participating in treatment programs", as stated in *Proulx*,

supra at para. 103, would differ from his current existence. Likewise, with respect to the imposition of community service work as a means of achieving denunciation, I conclude that doing so would not in anyway denounce Father Desjardins' conduct in the circumstances of this case. This is so because his whole life has been that of service to the community. He continues to volunteer in his religious and wider community, and has expressed his desire to continue to do so in the future. In my view, ordering a convicted offender to do something he is already doing, and then suggesting to do so is a way of expressing denunciation for the offender's conduct, is simply not so.

[50] I also wish to address the suggestion in cases such as *R v Proulx*, *supra*, and *R v McLachlan, supra*, that ample denunciation can arise from the stigma of having to serve a conditional sentence under conditions in the community, with the attendant scrutiny of others in the community. I do not come to that conclusion in the particular circumstances of this case. First, the offence was committed in Marcelin, Saskatchewan, and Father Desjardins has not resided there for many years. He has resided in the much larger community of Winnipeg, Manitoba, since 1986. Whereas Father Desjardins' plight, if I can put it that way, would perhaps be more notorious in a small community such as Marcelin, in Winnipeg he is but one person in a very large community, far removed from where his offence was committed. In these circumstances, I am of the view that the denunciatory effect of any such stigma in the community would be minimal. Furthermore, public scrutiny is an ordinary incident of our justice system.

[51] In summary, although there are many mitigating factors present in Father Desjardins' circumstances and he has, but for this incident, led a long and exemplary life, I conclude that the primary sentencing objectives of denunciation and general deterrence can only be met by the imposition of a period of actual incarceration. I have given this matter a great deal of consideration, and do not come to this decision lightly. However, as was noted by the Saskatchewan Court of Appeal in *R v S(M)*, *supra*, at para. 37:

> As we have said many times in the past, subjective factors are occasionally overborne by objective considerations and judges must, however painful, do their duty.

[52] Taking into account the circumstances of this case, I sentence Father Desjardins to a term of imprisonment of six months in a Provincial Correctional Centre.

[53] In addition, upon the completion of the period of incarceration, Father Desjardins will be subject to probation for a period of twelve months. The terms of that Probation Order are as follows:

1. The accused shall keep the peace and be of good behaviour;

2. The accused shall appear before the court when required to do so by the court;

3. The accused shall notify the court or the Probation Officer in advance of any change of name or address and promptly notify the court or the Probation Officer of any change of employment or occupation;

4. Report to the Chief Probation Officer or his or her designate, in person, within two working days of his release from jail, and thereafter as required by the Probation Officer or designate;

5. The accused shall have no contact of any kind in any way, directly or indirectly, with JW, the victim of this offence, and shall not be at the residence, work place or place of education of the victim, as may be known to him;

6. The accused shall participate in assessments and complete programming for sexual offending, as directed by the Probation Officer or his or her designate, and shall not give cause for dismissal from any such programming.

[54] The Crown also seeks an order under s. 490.012 of the *Criminal Code*, requiring Father Desjardins to comply with the provisions of the *Sex Offender Information Registration Act* (*SOIRA*). Indecent assault contrary to s. 149 of the *Criminal Code* is a designated offence within the meaning of that section. The defence does not oppose such an order being made, and there is no evidence

before me to suggest that the impact of such an order on Father Desjardins would be grossly disproportionate to the public interest served by such an order. Accordingly, pursuant to ss. 490.012(1) and 490.013(2)(a), Father Desjardins is ordered to comply with the provisions of the *Sex Offender Information Registration Act* for a period of ten years.

[55] The Crown also seeks a DNA sample order pursuant to s. 487.051 of the *Criminal Code*. Indecent assault is a primary designated offence listed in para. (b) of the definition section in s. 487.04. The defence does not oppose the making of the order, and once again there is no evidence which suggests the impact of such an order on Father Desjardins' privacy or security of the person would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice to be achieved through the early detection, arrest and conviction of offenders. Accordingly, I make an order pursuant to s. 487.051 of the *Criminal Code*, authorising the taking of samples of bodily substances from Father Desjardins for forensic DNA analysis.

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B.D. Wright, J