

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. S.R.L., 2013 NSSC 57

Date: 20130215

Docket: CRH 391393

Registry: Halifax

Between:

Her Majesty the Queen

Plaintiff

v.

S. R. L.

Defendant

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Restriction on publication: Section 486 of the *Criminal Code of Canada*

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: January 28, 2013, in Halifax, Nova Scotia

Counsel: Rick Woodburn, Crown
Peter Planetta, Defence

By the Court:

[1] S. R. L. has entered a plea of guilty to one count of sexual assault on JL which covers a period from 2005 to 2011. There are numerous other counts in the indictment and the Crown has indicated that they will be dealing with these counts at the conclusion of this sentencing.

[2] First of all, I want to thank Counsel for the Crown and counsel for Mr. L. for their submissions and their assistance throughout these proceedings. I particularly wish to thank them for their written materials which I found very helpful.

[3] As has been observed by counsel, imposing a sentence on one fellow human is a very difficult task. It is a task that I have to approach free of sympathy and prejudice. Sentencing is not an exact science, as two judges may not come to the same results even on the same facts. Nevertheless, it is my duty to impose a sentence on a crime to which you have pled guilty.

[4] Sexual assault is an act of violence perpetrated by one human being against another. It is an invasion of the most private aspect of one's human dignity, one that can only be shared but at the will of the one who possesses it and who is entitled to control it. It is not to be dictated, demanded, thwarted, denied or in any way controlled by a third-party, be it a parent, a husband, a wife, a partner or a lover. It is, therefore, in my view, sacrosanct.

[5] JL was in a stepdaughter/stepfather relationship with Mr. L.. She is the biological daughter of C. L.. C. L. and S. L. entered in a relationship and eventually married. This relationship resulted in them having three additional children. Mr. L. became, for all intents and purposes, the father figure in JL's life. At the time of the marriage of the parties, she was approximately 7 years of age.

[6] Around the age of 12, that is around her age of 12, Mr. L. began having a sexual interest in her. It began with touching and eventually it became everything about sex. The acts progressed to masturbation, to oral sex, to sexual intercourse and to anal sex. When it began, it happened a couple of times per month; it progressed to several times each week. It became so frequent that Mr. L. thought of the abuse as "a relationship". According to JL, she saw herself there simply to

accommodate his sexual desires. His need for her to perform sex acts on him became pathological. In other words, he treated her as a sex toy. It is difficult to imagine such a family situation. As JL grew older, he managed to control her, manipulate her, demanding that she have no friends and on numerous occasions would tell her what to say to you, how to dress and what she could wear and what she could not wear. This was at a time when she was between, I would say the ages of 15 and 17. Mr. L. told her that he had conversations with God, saying that there was nothing wrong with what they were doing. Mr. L. also told her that if she masturbated him or gave him oral sex that would be somehow beneficial for her health. She related to the Court that these sexual acts, at the very least, amounted to well over 100 incidents. Mr. L. , you knew what you were doing and it was wrong for you not to stop.

[7] So as to minimize detection and prevent any possible pregnancy you initiated anal sex causing her excruciating pain. When she would tell you to stop, you ignored her. You knew it was wrong and you told her it was wrong. At no time did you apologize to her. You never said that these attacks would stop even though she was crying. In fact, you continued until she disclosed the events to her mother in 2011. The reason for the delayed disclosure was that you were telling

her that the Bible approved of the relationship and if she disclosed the relationship to her mother, it would effectively destroy the family. JL could not bear it anymore and upon consultation with a friend she disclosed to her mother in 2011. Even in the course of disclosure, you made every attempt to include her becoming somewhat of a consensual partner. After being outed, you attempted to use your other children to manipulate a path back into the family.

[8] Up until the last few months, you attempted to paint her as the temptress, the sexual aggressor. That's when she was 12 years of age. You said that her approaches to you were so difficult to repel that you finally had to give in. You could not reproach her approach for sex. She was at that time, I remind, 12 years of age.

[9] So your conduct continued from 2005 to 2001. She became for all intents, your property to fulfill your sexual deviancies. You kept a tight and firm control on her and by your conduct you demoralized her and devalued her.

[10] JL presented a victim impact statement as did her mother and her sister, A.. I also have the victim impact statements of the two younger children and I will make brief references to those this afternoon.

[11] You are 39 years of age, sir. You will be 40 on September 12, 2013. .

[12] In reviewing the presentence report, you described your relationship with your father as okay claiming that he was physically abusive and an alcoholic. You claim your childhood was dysfunctional and that your stepmother was not allowed to be a parent to you or your sisters. You described your relationship with her as fantastic. You described your relationship with your sisters and claimed that one of your sisters, S., was abusive towards all of you. She was controlling and would remind you that you were wrong for feeling the way you did. You claim that she tried to kill you when you were a young person by attempting to drown you or smother you. You blamed that on her having jealousy and envy issues. However, you had a good relationship with your two other sisters. You claim that when the sisters moved out of the family home things changed. You also claim that you were sexually abused by an uncle starting at the age of three. You can remember one such incident occurring and, also, you were sexually abused by a 17-year-old

neighbour when you were approximately six years of age. He had mental problems and he would give you toys to have his way with you. This occurred on a couple of occasions. You claim that because you were your grandfather's favourite you were abandoned and rejected a lot by your siblings and relatives in your younger years.

[13] You married C. L. in 2000 although the two of you had met earlier. You claim that in the beginning she was controlling and then you went to a program where the roles were reversed and then you became controlling and Ms. L. became compliant.

[14] You said that in school you were a very good athlete addicted to a variety of sports. Although you had plans to attend college you did not as a result of a request, initially from your father, and then did not have sufficient funds.

[15] You are currently unemployed. You have held various jobs over the last 10 years. And, for the last several years you and Ms. L. have been doing residential cleaning and then moved to cleaning office spaces.

[16] Shortly after disclosure you indicated that you had met with your counsellor, Carol Dimock . Initially, these meetings were weekly but since September 2012 they had been biweekly.

[17] You have also met with two others whom are ordained ministers.

[18] You claimed to the Probation Officer that you have anger issues and a couple of times this has gotten you to the point of rage. You have claimed that you have various addictions such as sex, alcohol, soccer, children, food and religion. You reported to the Probation Officer that you were prepared to take whatever steps necessary not to return to the person you were.

[19] As to your involvement with liquor, it was with your parents' liquor, although it was not until Grade 10 that you had your first beer. Later you became a regular drinker when the relationship with your father fell apart. After returning from [...] on a soccer tournament you claimed that you drank every night for years and stopped only when you met Ms. L..

[20] Your first used of marijuana was when you were 21 or 22, trying it out with friends but then didn't use it anymore.

[21] The Probation Officer referred to your contact with Ms. Dimock and she also spoke with her. Ms. Dimock reported that you were working on such things as boundaries and your denial. Ms. Dimock claimed that you were initially you were maintaining your denial but now you have taken full responsibility. She also claims that you have taken full responsibility and ownership for the sexual abuse and that you have come to accept responsibility for your actions.

[22] Ms. Dimock told the Probation Officer that she was working with you on relapse prevention and that a custodial sentence will serve no purpose. She was firm in her expression to the Probation Officer that restorative justice would be beneficial to all concerned.

[23] The Probation Officer also spoke to Mr. S. and Mr. M..

[24] In your discussions with the Probation Officer you stated to him, and I quote: "Mr. L. did advise that 'how I see things doesn't mean the way it was',

adding 'I sexually abused my daughter.' But you claim that your excuse for your actions were that your addictions were so strong and you also told the probation officer that you were doing this for her, namely JL.

[25] The Court ordered a Forensic Sexual Behaviour Pre-Sentence Assessment which was completed by Dr. Connors. Dr. Connors was qualified to give expert testimony as an expert in the field of assessment and treatment of sexual offenders and risk of re-offending and treatment recommendations, on the consent of your counsel. She is a clinical psychologist and in addition to having her own private practice, she is the Manager of the Provincial Forensic Sexual Behaviour Program at the East Coast Forensic Hospital in Dartmouth, NS. She is a graduate of both Acadia and the University of British Columbia and from the latter she holds a doctorate in clinical psychology.

[26] In her report, Dr. Connors indicated that she spent approximately 11 hours to interview you and had you undergo a series of tests and assessments. She observed that as a result of the penile plethysmography testing that it revealed that you are attracted to both pubescent and adult females. You reported to her that you had been sexually and physically abused in childhood along with alcohol

abuse. Dr. Connors noted that the offences in question occurred with a high level of frequency and increased elevation and escalation, and that you had JL perform various sexual acts that she wasn't comfortable with, such as swallowing your semen and submitting to anal intercourse. She expressed concern about the method of your manipulation by using God as an authority to enforce compliance and, finally, you were blaming the victim for your actions. She also noted that you had access to the victim in your own home and at that time you were exercising authority and power over as her stepfather and that the sexual abuse actually occurred with others in the house and, at times, with others in the same room. However, she also reported that there were more moderating variables such as your minimal criminal history, your willingness to attend counselling the offence was incestuous in nature, which is the lowest base of sexual offending.

[27] Dr. Connors added that some of the significant contributors to your crime remains in place - sexual frustration, feeling of rejection from C. L., high levels of stress, and a belief in implicit theories such as that JL initiated the sexual abuse.

[28] She was very concerned that you might have authority and further access with an under aged girls. She also noted that although non-biological pubescent

females are considered the highest risk category for you, it cannot be concluded that you posed no risk to biological daughters, nor to males.

[29] She acknowledged that you have been attending pastoral counselling, of which she approved. However, she found it very disturbing of your exchange of emails with your biological daughter, A.. After these came to light Dr. Connors considered you to be manipulative despite months of counselling. She also was concerned that you told her you saw yourself as a victim before because you were blaming JL and her mother for your actions. She says that your account, Mr. L., of your abusive actions suggest that you continue to struggle to see yourself as fully responsible for all aspects of the sexual abuse, including its initiation.

[30] She added that the actuarial risk estimates puts you in a moderate category.

[31] Dr. Connors continued that your baseline risk for future violence (including sexual assault) appears moderate, particularly over the long term with risk for general criminality likely lower. At the present time, dynamic variables suggest that your risk is well managed, she writes, due to your status before the Courts and

lack of contact with JL or other underage females. She was concerned about you having any contact or authority or access with under aged girls.

[32] Dr. Connors made, both in Court and in her report, a series of recommendations for treatment requiring specialized treatment, none of which are available in provincial penal institutions. Some of them are available as community-based programs and all of these programs referred to as being appropriate for you are available in the federal penal institution setting. She pointed out, however, and I quote:

Such programs as available in the community in Nova Scotia as well within the federal penitentiary system in New Brunswick and other provinces. While Mr. L.'s level is commensurate with the intake criteria for community program, it is noted that the nature of the sexual abuse that he perpetrated in terms of its duration, intrusiveness and frank manipulation is more similar to those attending federal programs.

[33] She agreed that it was worthwhile for you to continue your counselling and healing process. She agreed that it was clearly a benefit to you and that you had made important strides in your counselling to date. However, she felt that programs designed for those who have committed significant sexual offenses such as this one, would take a great deal of treatment and counselling. More so that can be available through the program offered by Ms. Dimock.

[34] Ms. Dimock testified and prepared a report. She holds a Master of Divinity including a clinical component for sexual offenders from Acadia University. She has worked extensively with sex offenders since 1988 both on her own and in group settings. She has previously worked at the youth facility involving deviant offenders, abnormal offenders and sexual offenders. She has followed over the years, a number of courses, lectures and seminars. She has volunteered at Westmorland Institute, a federal institution known for its sex treatment programs. She has also worked with victims of sex abuse and described these in detail. She acknowledge that she did not possess specialized training enabling her to offer an expert opinion on the issue of risk of re-offending or treatment.

[35] She initially met with you in February 2012 when you came in seeking counselling assistance. You told her your story and she thereby got a sense of the issues. She indicated that she wanted you to address issues that you needed to deal. Namely, shame, fear, anxiety, anger and depression. All of these, that she said you were suffering from. She also detected that you were suffering from a wall of loneliness. These counselling sessions lasted on a weekly basis from February to September 2012, and at that time they were reduced to a bi-weekly

basis. In the initial sessions, she indicated that you identified yourself as the victim. Over time, you became fully engaged and were always keen to learn, to grow and to change. One of the courses she offered you was a course on “boundaries” because she claimed you did not have any boundaries. The counselling included a spiritual program.

[36] She stated that initially you blamed JL. However, over time this changed and she claims that this was the first step in you claiming the ownership of your deeds. She described this as a gradual process and indicated that the more a person heals the more he becomes fully engaged in accepting responsibility.

[37] She maintained that you now accept that it was entirely your fault and you reported that you no longer feel depressed or anxious. She also stated that she had provided you with the tools to deal with your problems.

[38] As to your addiction, and manipulation, she claims that both of you worked on these problems and that you have made progress. She says that physically, emotionally and mentally, you are a changed person. You are more balanced and showing more empathy for other people.

[39] She also claimed that you have a lot of remorse and that she was able to detect this from your feeling and expression.

[40] She also suggested that you had to watch yourself and to not do anything that would raise a suspicion of improper conduct. She also again referred to community-based programs which are available in Nova Scotia for sexual offenders.

[41] She did not agree with the suggestion that she was being manipulated by you , but if it had happened it certainly had stopped in the last several months.

[42] She believes that people who have been sexually abused are warped in their thinking.

[43] She recognized or at least she accepted your claim that you had been abused as a child.

[44] She acknowledged that she does not have similar training to that of Dr. Connors but claimed that the rate of recidivism with respect to sex offenders who completed the Westmorland Institute program was 3.5% although these statistics were about 10-years old.

[45] She believes that restorative justice is the best way to deal with the issue so that both the victim and you can heal properly. She claimed that although you were blaming JL as being the aggressor, but over time you had moved from that position and she now claims that you accept that it was entirely your fault. She says that you came to that position after your meeting with Dr. Connors.

[46] She also maintains that incarceration will serve no useful purpose in your rehabilitation.

[47] I find the following has been established beyond a reasonable doubt:

- (a) Mr. L.'s risk of re-offending is at the moderate level as to pubescent and adult females;
- (b) Mr. L. reluctantly accepted fully that he was the aggressor; and
- (c) Mr. L. is in need of in-depth counselling and treatment.

[48] I am particularly concerned about the fact that you told Dr. Connors during the course of the interview that the underlying reason for the initial sexual contact between you and JL was that she was the sexual aggressor when she was 12 years of age, while I remind you, sir, you were in 30's. This is a position that you maintained and have only changed in the last several months. I am mindful of your claim and Ms. Dimock's claim that you are fully accepting of all of the fault, and entire responsibility, but I am concerned that between the period of your interview with Dr. Connors and your counselling that you now believe that you and not JL was the aggressor.

[49] Let me comment on the law in Canada as it relates to the offence of sexual assault. The maximum imprisonment that the law authorizes me to impose for such crimes is 10 years. The *Criminal Code*, in addition, directs as to how I am to proceed in imposing a sentence on you. The principles and objectives of sentencing are found in s. 718, 718.01, and 718.2. They are as follows:

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.

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

718.2 A court that imposes a sentence shall also take into consideration the following principles.

Here there are several principles set out. I will refer to those which have application here:

(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,

(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 imposed 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;

• • •

[50] The aggravating factors here are numerous:

1. You abused a person under the age of eighteen years;
2. You were in a position of trust and authority;
3. You planned to carry out this course of conduct and it was premeditated;
4. The length of time of the assaults was between the time JL was between 12 years of age and almost 18 years of age;
5. It only stopped when she came forward;
6. You caused deep psychological damage to the victim;
7. The level, frequency and intensity and intrusiveness of the assault.

[51] Furthermore, you justified your assaults by referring to the Bible and to God and you increased your frequency from a couple of a days each month to a couple of days each week. As I said, these included touching, vaginal intercourse, anal sex, oral sex and also manipulation in having her swallow your semen because of some biblical or religious belief that it would cure a medical ailment. For many years you claimed that she was the temptress, even quoting proverbs from the Bible. You refused to stop even when she was crying out in pain. You laughed at her, essentially when she had to vomit your semen.

[52] Other factors is the degree of manipulation, the planning, the control, the grooming, the coaching in fact for her to give you better oral sex you had her watch a video. You carried on these activities while other members slept in

adjoining rooms. You ruined her chances of being successful in her first year of university.

[53] By your conduct and your actions, you controlled her every thought, her every action, her every friend, the manner of dress and appearance, all to serve your ends of sexual gratification.

[54] I accept the fact that you pled guilty (accepting responsibility) thereby avoiding the need for JL to testify either at a Preliminary Hearing or Trial. I also acknowledge the fact that you do not have a criminal record. Mr. L. you have professed remorse for your actions both to Ms. Dimock and today. You have also attended counselling.

[55] JL eloquently and poignantly related the effects of the nightmare she endured over a period 7 years. It is beyond disturbing and the circumstances of this case puts it as it most gruesome. She was robbed and vilified. She was humiliated and sadistically so. What she lost cannot be replaced because, Mr. L., you took 7 years of that young woman's life and ruined it. It impacted her in so many ways and maybe in some ways she has yet to experience. It impacted her

life and her relationship with the mother, her sisters and brother, her boy friends and her girlfriends, her university and her dreams, her future, any future relationships and love for life. What we saw the other day may be a well spoken, bright and engaging young woman but the horrors she spoke of belies this view.

[56] I refer to the following portion of her victim impact statement where she stated:

My life has been a sadistic, horrific nightmare - I have been used and abused, pillaged and raped, sodomized and heartlessly tortured, violated and violently wounded – I have been tormented by a sick, perverted demon more terrifying and vile than I could have ever imagined. I will never know how much damage was done to the physical, social, emotional and spiritual parts of me. I will forever be scarred with images of his sweaty, prickly penis penetrating and violently raping my soft innocent body. The twisted and perverted manipulation that has warped and distorted my view of fathers, of love, of sex, of intimacy, and most importantly MYSELF – has not only ruined my past, but will continue to oppress and terrorize my future. The implications of S.'s rampage against my existence cannot be expressed in a victim impact statement. No payment or retribution will ever serve justice to what has been done to me, and I fear that I will have to live with the horrible memories and graphic images of rape for the rest of my life[.]

I was an innocent, defenseless 12 year old girl, and my stepdad raped me and hurt me very bad. Hundreds of times. He touched my private parts, wrapped his lips around my breasts, made me touch his penis, made me spread my legs open for him to rape me, bend over so he could put his penis in my bum, made me put his prickly penis in my mouth and suck and then swallow his cum. I was a 12 year old girl, all I wanted was for my daddy to finally love me and want me. And I will forever be forced to battle the memory of S. L. putting his sexual desire above the responsibility of a father. I will never get my first kiss back. I will never get my virginity back. I will never be able to erase those painful, painful memories. I will never get to go to prom again. I will never have a normal high-school experience.

I have been hurt so bad.....I feel broken....and from now on, I am forced to fight an uphill battle to fix and regain the life that was stolen from me.

[57] As I indicated, I have also considered the victim impact statements of C. L., A. L. and also I have victim impact statements of the two younger children, G. L. and M. L.. I will not read them all except to make comment on a couple of lines.

G. says:

I thought about what it was that Dad did to J., but I know it's something for me to learn later. I really don't want to know now, I want to know when Mom's ready to tell me. I feel okay about J. moving about. I knew it would happen. I just didn't think it would be this soon. I feel okay not having a Dad around, but I would like to have a Dad around.

And Mathias says, and he is 9 years old:

I wish Daddy was still living with us. I feel angry because Dad's not here and I can't see him. I feel sad not having a Dad. If I could talk to my Dad I would say I feel kind of angry right now at least to what you did again.

I have ignored any suggestions in any of the victim impact statements that deal with the length of sentence I should impose on the accused as that is in my province and not the victim's

[58] I am by law required to review and consider cases that have been previously decided which consider sentences for similar offences and similar offenders, committed in similar circumstances. This does not yield a perfect result, obviously, because it is difficult to find precisely similar cases with similar circumstances and similar accused. Some are worse and some have more mitigating factors.

[59] Counsel for the Crown submitted that I should impose an eight-year sentence while Mr. Planetta, on behalf of Mr. L., submits that I should impose a sentence of two years. In their written submissions, they had given a range, in the case of Crown from six to eight years and in the case of Mr. Planetta, a range of two to four and a half years respectively.

[60] In *R. v. R.A.B.* [1995] B.C.J. No. 766 (QL), 58 BCAC 303, the offender sexually assaulted his nine-year-old daughter over a course of years, the assaults included “oral sex ...masturbation ...vaginal and anal touching ...with [his] penis.” The accused turned himself into the police. He minimized his behaviour repeatedly. In that case, the Court of Appeal increased a six-month sentence to 18 months in prison followed by two years probation. He was in a position of trust

and the age of the complainant were aggravating factors. However, the assaults were less intrusive and less frequent and did not occur for nearly as long.

[61] In *R. v. ARB*[1998] OJ No. 3648 (QL), 41 OR (3d) 361, the offender was convicted of sexually assaulting his adopted daughter when she was between the ages of 8 and 17. He was sentenced to four and a half years. Mr. Planetta suggested that should be the upper end of the range.

[62] In *R. v. Harrison* [1993] OJ No. 2098 (QL), 15 OR (3d) 513, the offender sexually abused his seven year old stepdaughter on several occasions with varying degrees of intrusiveness, including anal and vaginal penetration. Although there was some evidence of significant remorse and steps towards rehabilitation, including a guilty plea, he was sentenced to five years imprisonment, which was upheld on appeal. The only difference in the facts between *Harrison*, supra, and this case is that the assaults were less frequent, and the offender did not turn himself in to the police.

[63] In *R. v. S(DB)*, 2000 CarswellNS 166 (WL Can), 185 NSR (2d) 101, the offender lived with a woman in common law relationship and abused the her

daughter from the time that she was seven until 14. He was a father figure to the girl. The acts appeared to be limited to digital penetration and never escalated to full sexual intercourse. The effects on the little girl were devastating and there was some evidence that she had attempted suicide and engaged in aggressive and anti-social behaviour. The Court imposed a five-year sentence. There was no evidence of a guilty plea and no evidence of remorse and the offender did not have any relevant criminal record. The level of intrusiveness and frequency were on the lower end of the scale.

[64] In *R. v. N.* unreported, the offender sexually abused his stepdaughter from the ages of 11 to 14. It began with touching and escalated to vaginal and anal intercourse. It occurred frequently, with the offender admitting that he had sexual contact with his stepdaughter almost every day. He did use drugs although there was no use of threats and there was significant manipulation and abuse of this position of trust. It was planned and deliberate and he even took photos of her vagina. He had no relevant criminal record. Factors that differentiate the case from the present one before me is primarily the use of drugs, the incidents lasted for three years, not six. The offender did not turn himself in, but did confess. The Crown had a very strong case even before the offender's confession so the

mitigating effect of the guilty plea was reduced. The offender in that case had very little insight into the horrors of his behaviour and claimed that they were in love. The Court imposed an eight year sentence.

[65] In *R. v. S* [2002] NSSC 221, 208 NSR (2d) 191, the accused was found guilty of rape and on a second count of indecent assault on the same complainant between the period January 1969 in December 1970 when the complainant was between the ages of 9 and this continued until she was 15. He had also been convicted of four counts involving another complainant, two were attempted rape and two were for indecent assault. These incidents occurred between 1969 and 1976. And they stood in a father-daughter relationship. A sentence of five years was imposed.

[66] In *R. v. A.N.* [2009] N.S.J. No. 270, 2009 NSSC 186, 279 N.S.R. (2d) 201, Justice Beveridge of this Court, as he then was, imposed a total of eight years of imprisonment. The accused was convicted of indecent assault and rape against one his daughters between 1970 and 1976 and indecent assault, rape and incest over the period from 1974 to 1980 against his second daughter. When the offences were committed the daughters were between 12 and 18. The acts

progressed from touching to masturbation to digital penetration to oral sex and telling one of them that swallowing his ejaculate would be healthy for her. By the time the first complainant was in Grade 9 he had sex with her every Sunday morning in different parts of the house. He used vaseline on his penis to be able to penetrate her. The assaults occurred even after it was disclosed to her mother. She had not disclosed to her mother earlier because the accused told her that if she disclosed that she and her siblings would be sent to separate foster homes because her mother was not working and couldn't afford to keep them. The first daughter estimated it occurred many, many times, easily in the hundreds. As to the second complainant similar conduct took place but she estimated the total number of incidents between 15 and 20. On the count relating to the first daughter, the Court imposed a sentence of five years and with respect to the second daughter imposed a three year sentence. The aggravating factors were similar to the matter before me however, here there were mitigating factors such as a guilty plea, remorse and agreeing to a course of counselling was not present.

[67] Mr. L. - you committed a crime of what I call extreme violence. There may not have been any physical violence, but the acts themselves were extremely violent. There was no consent ever and even if there could have been consent, JL

never consented. You may not have threatened or struck her, but in your own way you made her fearful of you. You were an extremely strict disciplinarian, more so with her than with your other children. You were not above physical violence but you also told JL that the Holy Bible made your relationship a totally acceptable one. You clearly manipulated her and abused her.

[68] I refer to comments made by Justice Moldaver, now at the Supreme Court of Canada and at that time was with the Ontario Court of Appeal in *R. v. D.D.* [2002] O.J. No. 1061, 157 O.A.C. 323. The facts are dissimilar to the facts here. In that case where the accused had been found guilty of 11 counts of sex-related offences involving four young boys between the ages of 5 and 8 years old and for a period of time ranging from two to seven years. The acts included fellatio, masturbation, anal intercourse and attempted anal intercourse, group sexual encounters and anal intercourse with two of the four boys. He was in a position of trust and used force to get compliance and he showered them with expensive gifts, trips and provided them with beer and cigarettes. He also introduced them to pornography videos. He threatened them and used physical violence, even threatening one of the boys that if he disclosed he would throw him over the 13th floor balcony. The accused was 34 years old at the time of the sentencing. He did not plead guilty or seek

treatment or express remorse. The range of sentencing in that case was higher than here but the following comments, I think, are apt. He stated:

Before going further, I wish to emphasize that the ranges which I have identified are not meant to be fixed and inflexible. On the contrary, sentencing is not an exact science and trial judges must retain the flexibility needed to do justice in individual cases. The suggested ranges are merely guidelines designed to assist trial judges in their difficult task of fashioning fit and just sentences in similar cases.

The overall message however, is meant to be clear. Adult sexual predators who would put the lives of innocent children at risk to satisfy their deviant sexual needs must know that will pay a heavy price. In cases such as this, absent exceptional circumstances, the objectives of sentencing proclaimed by Parliament in s. 718 (a), (b) and (c) of the Criminal Code, commonly referred to as denunciation, general and specific deterrence, and the need to separate offenders from society, must take precedence over the other recognized objectives of sentencing.

We as a society owe it to our children to protect them from the harm caused by offenders like the appellant. Our children are at once our most valued and most vulnerable assets. Throughout their formative years, they are manifestly incapable of defending themselves against predators like the appellant and as such, they make easy prey. People like the appellant know this only too well and exploit it to achieve their selfish ends, heedless of the dire consequences that can and often follow.

In this respect, while there may have been a time, years ago, when offenders like the appellant could take refuge in fact that little was known about the nature of the extent of damage caused by sexual abuse, that time has long since passed. Today, that excuse no longer holds sway. The horrific consequences of childhood sexual abuse are only too well known.

[69] Justice Moldaver referred to the cases of *R. v. S.(W.B.) and R. v. P.(M)* (1992), 73 C.C.C. (3d) 530 at 535 from the Alberta Court of Appeal where it was observed:

When the victim of a major sexual assault is a child, it is also no doubt true that such an assault frequently results in serious psychological harm to the victim.

When a man has assaulted a child for his sexual gratification, then, even if no long-lasting physical trauma is suffered by the child, it is reasonable to assume that the child may have suffered emotional trauma, the effects of which may survive longer than bruises or broken bones, and may even be permanent.

One consequence of being abused sexually may be that the child will never be able, as an adult, to form a loving, caring relationship with another adult of the opposite sex, being always fearful, even unconsciously that such a partner will use sexual acts to hurt him or her rather than as an intimate expression of caring and affection. There is no empirical way of proving that a particular child victim's emotional trauma will or will not make it more difficult or impossible for him or her to love another, without fear of abuse. We have only the recorded experiences of men and woman who attribute their difficulties as adults in forming mature and fulfilling relationships to their having been abused sexually when they were children.

Another consequence of being abused sexually may be that the child, when he or she becomes adult, will treat a child or children as he or she had been treated as a child - that is, he or she may abuse a child sexually. There is no empirical way of proving that a particular child victim, when he or she becomes an adult, will do to some child what has been done to him or her. We do know that sentencing judges are commonly told by defence counsel that the accused claims to have been sexually abused by a man (or by a woman, or both) who had stood in a parental relationship to him or her when he or she was child.

[70] As you know Mr. L., your conduct has had a tremendously negative impact on your stepdaughter. You took away her innocence and opportunity, in fact her right, to be a little girl and grow to a teenager and become a young woman. You took away and got in the way of developing a relationship with her and in doing so failed to understand that your role was to be a parent not to be a sexual aggressor. You got in the way of her being able to form healthy relationships with others

friends or partners. She has been scarred by your behaviour and out of desperation she came forward and disclosed to her mother.

[71] In imposing a sentence I have to take these particular elements into consideration; retribution, general deterrence and denunciation.

[72] I refer to the following in *R. v. A.N.*, supra, at paragraph 75 where Justice Beveridge stated:

The Supreme Court of Canada in a case called *C.A.M.*, [1996] S.C.J. No. 28 clarified what is meant by these terms. Chief Justice Lamer there wrote:

... Retribution in the criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral probability of the offender, having regard to the intentional risk-taking defender, the consequential harm caused by the offender, and the normative character of the offender's conduct ...

He went on at paragraph 81 to say:

81 Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that the 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 the society's basic code of values as enshrined within our substantive criminal law ...

[73] As to specific and general deterrence, first specific deterrence, it is necessary for me to take into account that Dr. Connors stated, and I accept, that there is a moderate chance or likelihood of reoffence, particularly with respect to pubescent and adult females. This may be lessened over time with serious and intensive treatment, more than the counselling you have received from Ms. Dimock.

[74] As to general deterrence, it must be clear to everyone present or in the public that such conduct that Mr. L. involved himself in cannot be and will not be tolerated and will be subject to severe sanctions. Eventually the secret of conduct of sexual depravity cannot be hidden in the closet forever.

[75] With some of the counselling you have received, Mr. L., you have gained some insight of what truly happened. However, I believe that you still require significant treatment to eliminate or at the very least reduce your risk of re-offending so that members of the public may be protected. Any reconciliation with JL and consequently members of your family will, in my view, be dependent on the success of your treatment. It must be remembered that Dr. Connors is of the view that the federal penitentiary is a better place for such treatment in your

case, although I acknowledge that there are some aspects of that treatment available in the community.

[76] I agree with Dr. Connors that the preferred place for such treatment in your case, given your circumstances, is in the federal penal system.

[77] The Crown has requested and the Defence has not objected to an Order under s. 161 of the *Criminal Code*, namely being in places where young people attend and congregate, an Order of Prohibition with respect to the possession of firearms, and also an Order for DNA analysis.

[78] With respect to the s. 161 Order, I am going to grant that for 14 years.

[79] The Order for prohibition with respect to firearms, s. 109 is for 10 years following Mr. L.'s discharge.

[80] I am ordering Mr. L. to provide a sample for DNA analysis, and that is mandatory as well.

[81] The SOIRA Order will be for a period of 20 years following the discharge or release of Mr. L..

[82] Mr. L., it is the sentence of the Court that you serve a period of six and a half years in a federal penitentiary. In the meantime, I also make recommendations that you follow a course of treatment as outlined in Dr. Connors assessment.

[83] Motion for dismissal of remaining charges granted.

[84] Victim surcharge fee is waived.

[85] The net result, even though Mr. L. has been in custody for the last 10 days, I am not allowing any credit for that, total custody is six and a half years.

LeBlanc, J.