

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** R. v. J.P., 2013 NSSC 65

**Date:** 20130215  
**Docket:** CRS380060  
**Registry:** Sydney, N.S.

**Between:**

Her Majesty the Queen

v.

J.P.

---

**Sentencing**

---

**Restriction on publication:** Ban on publication and broadcast on name of complainant

**Judge:** The Honourable Justice Patrick Murray

**Heard:** February 15, 2013, in Sydney, Nova Scotia

**Oral Decision:** February 15, 2013

**Written Decision:** February 20, 2013

**Counsel:** Gerald MacDonald, Solicitor for the Crown  
Elizabeth Cusack, Q.C., Solicitor for the Defence

**By the Court: (Orally)**

[1] I will now give my sentencing decision in regard to Mr. P.. Before I do, this being an oral decision, I reserve the right to make any corrections to grammar, edit the decision, but of course the decision certainly will not change in that event.

[2] At the outset I want to acknowledge that I received this morning the banking information of Ms. Cusack regarding Mr. P.'s finances with the CIBC, as well the Crown's sentencing recommendation and probation conditions which have been discussed on the record, as well as the order regarding the prohibition.

[3] Sentencing is one of the most difficult aspects of a judge's role. On the one hand it must denounce the conduct of the accused for society's purposes and also consider whether rehabilitation is appropriate. This is also in society of long term interest and in the public interest. Similarly, deterring the accused and others from engaging in similar conduct must and should be a consideration in imposing sentence. These are some of the factors which must be balanced in arriving at a just sentence.

[4] My final comment at the outset is I want to acknowledge as well that Mr. P. has been respectful of this Court and of the process throughout.

[5] He is here today to be sentenced on three (3) sexual offences. He was convicted of those charges on August 20, 2012, following a Trial before me in June of 2012.

[6] The three charges are: (1) touching HM for a sexual purpose contrary to s. 151 of the *Criminal Code of Canada*, (2) invitation to sexual touching contrary to s. 152 of the *Criminal Code of Canada*, and (3) sexual assault contrary to s. 271 of the *Criminal Code of Canada*.

[7] Mr. P. is 63 years of age. At the time of these offences, which occurred over six (6) years he was between 44 (forty-four) and 50 (fifty) years of age. The victim HM was between six (6) and 12 (twelve) years of age. Mr. P. was at the time married to the sister of the victim's mother and thus in a position of trust.

[8] The evidence of the victim is that this began with kissing in the den of her grandparent's home where she resided with her mother and brother and numerous other family members of her mother. It then progressed to drives to Tim Hortons where he would be alone with her. They would go to the graveyard on [...] where he would invite her to sit on his lap and he would place his hand up her shirt and down her pants under her clothing. The kissing involved french kissing and the trips to the graveyard continued for a period of years. The last incident occurred in the den at [...], it was an invitation for her to touch his exposed penis. She left the room and it did not happen.

[9] I must now sentence Mr. P. for these offences which are serious and which have had serious consequences for both the victim, her family and of course Mr. P. himself.

[10] I have considered the submissions of counsel Mr. MacDonald for the Crown and Ms. Cusack for the Defence and as well the Victim Impact Statements submitted by HM. I want to thank counsel as well as the victim for submitting her statement to the Court.

[11] The specific recommendation of the Crown was for a custodial sentence in a penal institution, specifically a federal term of incarceration initially and clarified today as a range which could include federal incarceration in a federal institution. The range cited by the Crown today was between eighteen (18) and twenty-four (24) months.

[12] The Defence is seeking that I impose a conditional sentence upon Mr. P. on the sexual assault and each of the additional charges. Such a sentence would be served in the community and the Defence submits this would be a fit and proper sentence in these circumstances in that Mr. P. would be on strict conditions which would see him treated and yet under house arrest. The treatment would be as recommended in the Pre-Sentence Report. Such a sentence the Defence says, would allow him to keep his job and continue to work.

[13] There are a range of sentencing options available to the Court.

[14] I turn now to discuss the circumstances of the offender, Mr. P.. His Pre-Sentence Report has been filed with the Court. I have read it carefully and it has been referred to by the Crown and by his counsel.

[15] The report is positive in many ways. Mr. P. has no criminal record. He is sixty-three (63) years of age. He has had stable employment during his life spending twenty-five (25) years with [...]. He attended high school until Grade 10 and became a [...] by trade. He comes from a large family. His parents immigrated from [...] when he was fifteen (15). All of his siblings reside in [...]. He has three (3) children from his first marriage. They are all adults and reside in Nova Scotia. His relationship with them is sporadic. The report states this incident has affected his relationship with them.

[16] His second marriage was to R.E., the aunt of HM. They were married for nineteen (19) years. Mr. P. describes that relationship as unhealthy and volatile. Mr. P. states he had a normal upbringing without abuse. He began working when he was twelve (12).

[17] He is presently married and has a stable life in [...] with his present wife of four (4) years. He is gainfully employed and supporting his family. He has three (3) step-children, one of whom resides with him.

[18] Mr. P. has volunteered in Minor Hockey and has been involved in soccer. He was involved also with unions in Cape Breton. He is described as a “homebody” with a small social network, mostly fellow employees. He is a hard worker. He does not socialize often. He has a substantial mortgage on his home as well as other commitments, financially. His stepdaughter of four (4) years was described as being “shocked” to learn of these charges. He is reported to have a strong relationship with his current family. He has no issues with alcohol or drug use. He has been described as a quiet, respectful and good person by his step-son. None of the sources in the report describe him as a danger to the community.

[19] The most troubling aspect of the report on its face is the author stating that Mr. P. has accepted no responsibility for his actions. Further, while he understands his legal situation, he failed to identify with the seriousness of the offence or the effect it had on the victim. In short, the offender has not expressed remorse.

[20] Mr. P.'s counsel states in her Brief that the report contains some inaccuracies on its face and reads as if Mr. P. admitted to criminal behaviour but minimized his involvement and the impact on the victim. He does not agree with this. "It's tricky" she says, Ms. Cusack, because remorse can be a mitigating factor.

[21] The Crown in fairness recognizes this, and acknowledges he has denied involvement in the offences. Referring to **R. v. Geddes** [1999] O.J. No. 4419, the Crown essentially agrees that such a situation should not be an aggravating factor.

[22] On this point I take the report to mean simply that Mr. P. is maintaining his innocence. While remorse can be a mitigating factor I accept that the lack of remorse due to maintaining one's innocence should not be an aggravating factor. I am sure he will discuss alternatives with his counsel. Otherwise Ms. Cusack says the report is positive. I concur that the report is positive and I accept the comments made today that Mr. P. is compassionate in regard to HM's current situation and predicament.

### **Victim Impact Statement**

[23] I turn to the Victim Impact Statement. The impact of these crimes on the victim is an important consideration in sentencing as noted by Judge Tufts in **R. v. S.C.C.** [2004] N.S.J. No. 272, 2004 NSPC 41. The Criminal Code provides in s. 722 that the Court shall consider any Victim Impact Statement prepared by the victim of the offence. I have been provided with such a statement by HM. I have read it carefully and carefully considered it. In it she says her childhood was taken from her. Her realization that this was wrong had an impact on her and naturally it was not a positive one. It came to light when her grandmother died in 2009 and she returned to the graveyard. Between the ages of six (6) and twelve (12) is pretty much the prime years of childhood. She now lives with this. She is now a parent and she says it is affecting her relationship with her young son. She did not finish high school and is unable to trust people, especially men. It is affecting her ability she says, to work and to return to school. She is still a young adult and will, of course, have the memory of each day for the rest of her life.

[24] In considering this report I have also considered the comments made by Mr. P.'s counsel this morning that certain aspects of the statement have been called

into question by them and are perhaps debatable. I temper and weigh that in my decision. Once again, however, the Court acknowledges and thanks the victim for her position as she stated it. I am entitled to take and have taken this into account.

### **Sentencing Principles**

[25] I turn now to discuss sentencing principles.

[26] Under s. 151 of the *Criminal Code* the charge of sexual interference carries with it the maximum penalty of ten (10) years imprisonment by indictment as does the charge of sexual touching under s. 152.

[27] Under s. 271 of the *Criminal Code* the charge of sexual assault brings with it the maximum penalty for an indictable offence is ten (10) years also.

[28] These penalties demonstrate the seriousness of these types of offences. In the case before me, the Crown proceeded by way of indictment on all three charges.

[29] The underlying consideration for the Court is as set out in s. 718.1 of the *Criminal Code of Canada*, which is referred to as the fundamental principle of sentencing. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In plain words it must be a fit and proper sentence. In determining that, I must look at and consider the fundamental purpose of sentencing and the objectives, which are also set out in the *Criminal Code of Canada* and there are six (6) of them.

#### **Section 718 of the *Code* reads:**

**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.**

[30] Additional considerations are aggravating factors and mitigating factors. A sentence should be increased or reduced to account for any aggravating or mitigating circumstances relating to the offence or to the offender. Also, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. There are others which I will not refer to verbatim, but one of those reflects a consideration that incarceration and deprivation of liberty would be a last resort, except of course where warranted.

[31] Many of the principles of sentencing are now codified under the *Criminal Code of Canada* in s. 718.2. The Crown has pointed out that certain of them were not so during the period of offences currently before me. One which is now codified is 718.2(a)(iii) and that is evidence that the offender abused a position of trust or authority in relation to the victim, in which case it shall be deemed to be an aggravating circumstance. Further, as already stated, a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances. This is s. 718.2(b). As mentioned, an offender should not be deprived of liberty, if less restrictive sanctions maybe appropriate and all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[32] The case law has clearly stated through the years that the objectives of denunciation and deterrence should be a primary consideration when the victims are children. As such a sentence must properly reflect the moral blameworthiness of the particular offender. Denunciation requires that a sentence should communicate society's condemnation of the offender's conduct. Deterrence is another objective and it refers to a sentence that will specifically deter the offender

from committing further offences as well as deter other like minded individuals from offending.

[33] These objectives are particularly relevant here as I am, based on the submissions, being asked to choose between a period of incarceration in an institution and a sentence served conditionally in the community.

[34] These, however, are not the only objectives. For example, rehabilitation is an important factor in establishing any sentence, and is of particular importance when dealing with young people and first offenders. Mr. P. is a first offender, having not been before the Courts.

[35] There is the totality principle as well as the need to account for individual circumstances. I am not intending to make an exhaustive list at this time but to refer to those which may apply here.

[36] In terms of a conditional sentence the case of **R. v. Proulx**, (1998) 127 C.C.C. (3d) 511 (S.C.C.) of the Supreme Court of Canada illustrates that a conditional sentence can provide significant deterrence and denunciation. The more serious the offence, the longer and more serious the conditions, with house arrest often being imposed. I have been asked by Defence Counsel to closely consider **Proulx**, and that a conditional sentence must be considered based on all facts and circumstances. There are advantages as the learned Chief Justice therein explained.

[37] I turn now to the case law which applies here and which has been provided to me. Mr. MacDonald has for the Crown and Ms. Cusack for Defence have in their briefs referred me to these cases to show how other courts have pronounced sentences in regards to these objectives. I hasten to add, as I have already said, that each case is different and must be decided on its own facts and circumstances.

[38] The Crown has referred to the case of **R. v. E.C.S.** (1995), 151 N.S.R. (2d) 136; 440 A.P.R. 136, in citing the need for general deterrence when considering sentencing options on sexual offences involving children. In particular the Crown referred to the following quote of Saunders J. (As he then was) on this point:

**“Justices of my court and my colleagues on the Court of Appeal in Nova Scotia have said, time and again, that the primary goal in crimes of violence, which include sexual**



**assaults and especially sexual assault against young people, must be general and specific deterrence. Any sentence imposed must express the community's abhorrence, revulsion and denunciation of the accused's criminal acts so as not only to deter the accused but also deter anybody else who may be so disposed."**

[39] The Crown has also referred to statements of the former Chief Justice Lorne Clarke (as referred to by Goodfellow J.) in **R. v. A.P.S.**, [1999] N.S.J. No. 242; C.R. No. 148223, and I quote:

**"In reviewing the sentences imposed by the trial judge, we are unable to agree with respect that they were fit and proper in the circumstances. It must now be evident in what the support has said in the cases involving sexual assault that general deterrence must be an overriding consideration."**

[40] This was later repeated in the case by Justice MacDonald in **R. v. Murray** (1986), 75 N.S.R. (2d) 361, and I quote:

**"General deterrence must be a primary consideration in offences of this kind where youthful victims are involved."**

[41] Finally, in **R. v. A.P.S.** Justice Clarke's comments in **R. v. Wood** (1986), 74 N.S.R. (2d) 31, were cited with authority as follows:

**"If defenceless children are to receive some measure of protection, the message must be sent to those who are inclined to take their advantage that such will not be tolerated."**

[42] The Crown relies extensively in his brief on the decision of **R. v. S.C.C.**, in which Judge Tufts sentenced **S.C.C.** to a two year federal sentence to be followed by a three year probationary term. **S.C.C.** pled guilty to sexual assault, contrary to s. 271. The victim was his eleven (11) year old step-son. The abuse occurred over a period of months between late 2002 and June of 2003. **S.C.C.** engaged in numerous sexual acts with his stepson which included rubbing the victim's body and legs, touching the victim's genitals and masturbating the victim. It also included **S.C.C.** performing fellatio on the victim and **S.C.C.** ejaculated himself.

[43] The Court in **S.C.C.** considered **Proulx** and rejected a conditional sentence concluding that the gravity of the offence and moral blameworthiness was such that the only sanction that could properly address the objectives of deterrence and denunciation was a term of custody served in a federal institution.

[44] In its brief the Crown has stated to the Court, and I am quoting:

**“It is respectfully submitted that the case before this Honourable Court merits a similar sentence (referring to S.C.C.). In the case before this Honourable Court, the acts do not include masturbation, fellatio or the offender ejaculating during the course of these events as it did in R. v. S.C.C.. In the case before this Honourable Court the offender is an uncle by marriage of the victim and not the stepfather as in S.C.C..**

**However, the sexual contact continued for several years in the case before this Honourable Court while it continued for months in SCC. While the offender did not live under the same roof as the victim in the case before this Honourable Court, he was a dominant male figure in the life of the victim’s family. Her evidence was that he was always around and he was her uncle. HM’s evidence was that particularly during the early years of the abuse, she said nothing because she believed that it was normal. She didn’t know otherwise. She testified how she eventually realized that her other uncles, including those who lived under the same roof did not touch her the way the offender did. The offender was in a position of trust with the victim. He had regular contact with the victim because of his relationship with her and he was able to have time alone with her because of the trust the victim and her family had in the offender. This was evident during the trial.”**

[45] The Crown has drawn the Court’s attention to further aggravating factors such as the age of the accused (between six (6) and twelve (12)), the existence of threats so she would not tell. The Crown referenced that the incidents were numerous over a period of years, and the impact on the victim.

[46] The Crown references mitigating factors as well, including the lack of a criminal record and no other acts of violence. The complainant was subject to a vigorous cross-examination at Trial and at Preliminary. The Crown acknowledges Mr. P. has stable employment and living circumstances in Calgary.

[47] I turn now to the Defence and the authorities it provided to the Court in support of Mr. P.'s position. I am urged by the Defence to consider the circumstances of the offender, including any appropriate prospects for treatment.

[48] According to the Pre-Sentence Report, Mr. P. does have characteristics for rehabilitation and treatment that a conditional sentence could address with conditions. The Pre-Sentence Report states quote:

**“The subject has in place factors that would support in the successful completion of community supervision, including a stable residence, social support network and positive family network, all of which lend themselves to a pro-social lifestyle.”**

[49] In the Pre-Sentence Report it is recommended that Mr. P. receive sex offender treatment counselling as part of a period of community supervision if deemed appropriate by the Court.

[50] The Defence further argues the sentence served in the community would enable Mr. P. to keep his job and support his family. He has a substantial mortgage payment and other obligations. The report indicates his financial situation is good.

[51] Ms. Cusack, on his behalf, argues that sentencing objectives require that offenders should be separated from society only where necessary, and it is not necessary to incarcerate Mr. P. when there are other options available for the court to impose a just sentence. Here I refer to s. 718(f).

[52] It must be noted that Mr. P. is agreeable to participate actively in counselling and assessment to determine whether he has any condition or paedophilic tendencies that could be a future concern to authorities in the justice system.

[53] The Defence argues further that Mr. P. has complied with substantial support payments for his former spouse and has been respectful of court orders.

[54] In the Defence brief it is acknowledged for sentencing that Mr. P. was an adult and HM was a child under the age of fourteen (14). That he was in a

position of trust in relation to the victim. That he was an uncle by marriage and trusted by the family with respect to his relationship with the children in the grandparent's home.

[55] As to specific deterrence Mr. P. has been through the very public humiliation of being convicted. According to his counsel he is depressed. Old friends and colleagues, with certain exceptions, have turned their backs. His children they say cannot be counted upon, nor even people for whom he provided unselfish time.

[56] At sixty-three (63) and without any other reported incident, a new marriage and stable employment, Mr. P. appears to be a low risk to re-offend. Specific deterrence is therefore not the central focus. It is instead general deterrence.

[57] As for general deterrence, the Defence argues a conditional sentence is a custodial sentence and can include measures such as house arrest in the offender's home under mandatory terms. A curfew may be designed to fit his work schedule, where he often works late afternoons into the evening and other measures such as non-communication with HM and her family. The Defence, to their credit, acknowledge that the use of this sentence is more often rejected than not, even in cases where a sentence of under two (2) years is contemplated.

[58] I note an acknowledgement of harm done to the victims and to the community and promotion of responsibility in offenders could be achieved by the previously mentioned sex offender treatment counselling.

[59] A number of cases have been submitted by the Defence. In **R. v. P.E.S.**, 2000 CanLII 26802 (NSSC), Associate Chief Justice Michael MacDonald (as he then was) rendered a conditional sentence which included house arrest. The victim was a ten (10) year old girl and it involved a position of trust. The accused had prior convictions and showed a lack of remorse. The abuse involved two sexual assaults in one evening. The level of invasiveness was low and involved breast touching and unbuttoning of jeans.

[60] The Defence further relies on **R. v. Winters, 174 NSR (2d) 83 (NSCA)** a decision of the Nova Scotia Court of Appeal which involved various sexual acts over a period of a month. The accused was a thirty-three (33) year old female and

her son's friend a twelve (12) year old boy. The abuse included intercourse, touching and oral sexual activities. The Court referred to the clear statement of Mandell, J.A. in **R. v. (W).L.F.** 1997 CanLII 10868 (NLCA), 481 A.P.R. 115, 119 CCC (3d) 97 of the Newfoundland Court of Appeal in rejecting the argument that sex offenders merit incarceration except in rare and exceptional circumstances.

[61] The Defence referred as well to the Nova Scotia decision of Haliburton J. in **R. v. C.K.H.** (1998) CanLII 17560 (NSSC) where a conditional sentence was imposed for as many as seven (7) incidents of touching when the victim was four (4) and again, when the victim was between nine (9) and eleven (11). This included digital penetration and other unsavoury behaviour.

[62] Justice Haliburton noted that strict conditions may be for a longer period than might normally be imposed for a jail term and further noted there is no hope of release from a conditional sentence as with institutional incarceration.

[63] In **R. v. G.A.L., 2001 NSCA 29**, the Court reinstated Judge Embree's sentence of fourteen (14) months' incarceration and his conclusion that a conditional sentence would not have adequately reflected the principles of denunciation and deterrence. The facts involved a sexual assault while a victim was asleep.

[64] I acknowledge that these are examples of conditionals sentences having been imposed for sexual related offences. In **S.C.C.** the Court referred to the degree of invasiveness or nature of the assault and the variety of the acts as important features, as well as the number of incidents and the period of time over which the abuse occurred, and the impact on the victim.

[65] The Defence is correct to discuss context in stating there as never vaginal penetration in the present case and no progression beyond touching and no threats of physical violence. The Defence is correct also to state there was no finding of coercion "*per se*". However, things were said to a young child to keep her from saying anything including that she would get in trouble. On the other hand, he was a trusted adult, so a statement that he would not be allowed to visit, another form of threat, is a form of coercion and shows a level of deceit.

[66] I question whether a further recitation of the cases serves any particular purpose other than to show there are different approaches to sentencing. Just, in terms of those I have referred to, in **P.E.S.** the abuse occurred over one day. In **Winters**, the incidents occurred over a month. In **C.K.H.** the period was longer initially, two years and then again years later, but not continuous.

[67] I accepted the evidence of HM who gave evidence that when she was in the den watching TV. Mr. P. would ask for a kiss and let on it would be on the cheek and then turn his head to kiss her on the lips. This led to his putting his tongue in her mouth. Things then progressed to drives in the car, then alone under the guise of going for coffee at Tim Hortons, with her. He used to let her drive the car while at the graveyard. That is when he would lift her upon him, with her help, and molest her under her clothing. Beyond that she did not elaborate. This began when she was young (older than six (6) or seven (7)) and not until she was twelve (12) did she realize it was wrong. This was when he exposed his penis and invited her to touch it. She was scared for a time.

[68] He was the beloved uncle, which is why the family trusted him with HM. Her mother at times would even encourage her to go, of course, never suspecting anything.

[69] The Defence states her memory of the vehicle shows she was older than six (6) or seven (7) due to the year of the [...] Grand Prix, which she remembered. Her memory of her age at various times I accepted. I refer here to paras. 120, 121 and 122 of my decision at Trial. **R. v. J.P.** 2012 NSSC 365.

[70] In **R. v. N.**, 2004 NSCA 137 (CA), a five (5) month term of imprisonment was imposed on facts bearing similarities to the present case except the victim was between twelve (12) and fourteen (14) and occurred over a two (2) year period.

[71] The Defence relies extensively in their brief on the Newfoundland case of **R. v. W.(M.A.)**, 1999, CarswellNS 39, [1999] N.S.J. 49, (C.A.) earlier referred to where the Court dismissed as “untenable” the notion that denunciation and deterrence cannot be achieved through a conditional sentence. I note in that case the Court stated the offender’s freedom can be severely limited, and that being detained at home with the stigma serving as daily deterrence to like minded persons.

[72] The section in place at the time of these offences requires me to address four (4) criteria in determining whether a conditional sentence is appropriate. The first is that the offence not be punishable by a minimum term of imprisonment. That can be met here. The second is that a sentence of less than two (2) years is available. I am satisfied this could be the case for Mr. P. based on his being a first offender, his Pre-Sentence Report and the less intrusive nature of the conduct, notwithstanding that it was repetitive. An in-depth analysis of this criteria at this point is not required.

[73] This leaves to the third criteria that the Court be satisfied serving the sentence in the community would not endanger the safety of the community and fourth, whether it would be consistent with the fundamental principle of sentencing.

[74] There is little evidence to suggest Mr. P. is a danger to the community. There is some reservation that he wishes to be tested for his sexual tendencies. I take this as his willingness to cooperate with treatment.

[75] I will turn therefore to the fourth criteria which is whether a conditional sentence would be consistent with the fundamental principles of sentencing.

[76] I have reviewed **Proulx**, and mention in particular para. 22 where conditional sentences are described as “a punitive sanction capable of achieving the objectives of denunciation and deterrence.” As requested by the Defence I have also looked at para. 21 where it is defined as a sentence of imprisonment, as well as other paragraphs, in particular 29, 37, 40 and 42.

[77] As recent as September of 2011 our Nova Scotia Court of Appeal affirmed the trial judge’s decision that of Judge Campbell in **R. v. E.M.W. [2009] N.S.J. No. 619**, where he rejected a conditional sentence. This case was referred to by the Crown in its brief. At para. 23 Fichaud, J.A. of our Appeal Court stated, quote:

**“This Court repeatedly has emphasized denunciation and deterrence in sentencing for sexual assaults against children.”**

[78] In **R. v. M.S. [2003] S.J. No. 185**, the Saskatchewan Court of Appeal discussed the Supreme Court of Canada case in **R. v. R.A.R., [2000] 1 S.C.R. 163**,

decided in the year 2000 which is at the end of the same time frame for the offences before me. In setting aside the conditional sentence involving the sexual assault of a young woman and restoring a one year term of imprisonment, the Court stated in para. 12, quote:

**“Madame Justice L’Heureux Dube relied in significant measure on general deterrence and denunciation, invoking the following notion drawn from *Proulx*:**

**“Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence.”  
(Emphasis added)**

[79] In terms of the gravity of this offence, while the level of invasiveness is arguably low, the repeated nature of the conduct over a prolonged period makes this a grave offence. The victim has described the impact it has had on her. I earlier described the method that this was carried out. The number of cases where the abuse continued for a six (6) year period or even a four (4) year period without detection, are fewer. The last incident in the den involving the exposure, showed a willingness of the offender to carry on. Add to this the breach by a trusted family member, which trust in effect allowed the abuse to continue, and these offences are grave and constitute a significant degree of responsibility by the offender. (And here I refer to s. 718.1)

[80] In the words of Justice Clarke, defenceless children must be provided with some measure of protection. I am therefore not satisfied that a conditional sentence would be consistent with the fundamental purpose of sentencing and sentencing principles. I, therefore, reject a conditional sentence here even though restorative goals might have been achieved by it.

[81] Finally I turn now to impose what I do find to be a fit and proper sentence.

### **Decision - Sentence Imposed**



[82] I have considered what would be a fit and proper sentence for Mr. P.. He is presently sixty-three (63) years old with a family. The Crown was seeking a federal term of imprisonment of two (2) years more or less. I must balance the impact on the victim, the circumstances of the accused and the public interest, in line with the factors I have mentioned.

[83] I do not believe a federal term of incarceration is necessary to deter others in the circumstances of Mr. P.. These crimes, in my opinion, can be denounced with a lesser term of imprisonment. Some restraint is called for based on Mr. P.'s circumstances.

[84] This has been a life altering event for him and his family. Imposing a term of incarceration for a sixty-three (63) year old, first time offender, who is gainfully employed sends a strong message of general deterrence. It also, in my view, sufficiently denounces the crime and will have repercussions for him beyond the institution.

[85] Exercising my discretion and having weighed and considered this matter as thoroughly as I can, I sentence Mr. P. to a one (1) year term of incarceration on the sexual assault pursuant to s. 271 and to a one year term of incarceration on the s. 151, sexual interference charge, and to a period of incarceration of six (6) months on the invitation to touching charge (s. 152). All sentences to be served concurrently, in a penal institution. This will be followed by an eighteen (18) month period of probation. The terms of probation will include those which have been provided to me by the Crown and will limit contact as provided therein. I will further grant the ancillary orders as requested by the Crown upon review, and this includes the DNA Order, the Order pursuant to the Sex Offender Information Registration Act, as well as the s. 109 Firearms Prohibition Order.

[86] This concludes my sentencing decision. Mr. P. you are in custody sir.

J.