SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. APL*, 2021 NSSC 238

Date: 20210727
Docket: CRH No. 468456
Registry: Halifax

Between:

Her Majesty the Queen

v.

APL

Restriction on Publication: s. 486.4, 486.5, and 539(1) C.C.

Sentencing Decision

Judge:	The Honourable Justice Glen G. McDougall
Heard:	November 18-22 & 25 and December 4, 5 & 12, 2019 September 1-2, & 10, 2020, in Halifax, Nova Scotia
Oral Decision:	July 27, 2021
Counsel:	Lisandra Hernandez (filling in for Eric Taylor), for the Provincial Crown Kathryn Piché, for the Accused

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Order restricting publication — victims and witnesses

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Justice system participants

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Offences

(2.1) The offences for the purposes of subsection (2) are

(a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

Limitation

(3) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Application and notice

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

Grounds

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Hearing may be held

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

Factors to be considered

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

Conditions

(8) An order may be subject to any conditions that the judge or justice thinks fit.

Publication prohibited

(9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

Order restricting publication of evidence taken at preliminary inquiry

539 (1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

(a) may, if application therefor is made by the prosecutor, and

(b) shall, if application therefor is made by any of the accused,

make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, the trial is ended.

By the Court (Orally):

[1] APL, was charged on a four count Indictment as follows:

1. That he between the 1st day of September, 2006 and the 1st day of August, 2015 at, or near Halifax, in the County of Halifax, in the Province of Nova Scotia, did unlawfully commit a sexual assault on M.H., contrary to Section 271 of the *Criminal Code.*

2. AND FURTHER that he at the same place aforesaid between the 1st day of September, 2006 and the 6th day of July, 2010, did for a sexual purpose touch M.H., a person under the age of sixteen years, directly with a part of his body, contrary to Section 151 of the *Criminal Code.*

3. AND FURTHER that he at the same place aforesaid between the 5th day of July, 2010 and the 6th day of July, 2012, did for a sexual purpose touch directly the body of M.H., a young person, with a part of his body, contrary to Section 153(1)(a) of the *Criminal Code*.

4. AND FURTHER that he at the same place aforesaid between the 1st day of September, 2006 and the 1st day of August, 2015, being in a position of trust or authority towards M.H., a person with a physical or mental disability, did without the consent of M.H. for a sexual purpose counsel

M.H. to touch directly or indirectly with a part of her body, the body of APL, contrary to Section 153.1(1)(a) of the *Criminal Code*.

[2] The trial was originally scheduled to take place over 6 days beginning on Monday, November 18, 2019. This did not include the 5 appearances made prior to the scheduled start of the trial to deal with pre-trial matters including an application pursuant to Section 278.93(1) of the *Criminal Code* for a hearing under Section 278.94 to determine whether evidence is admissible under sub-section 276(2) of the *Code.*

[3] Additional time was required to deal with a Defence Charter Application made at the close of the Crown's case. Defence counsel sought either a Stay of Proceedings against her client or, alternatively, a ruling to exclude evidence of a surreptitiously recorded conversation between the victim and the Accused.

[4] The Court ruled against the Defence's motion to stay or exclude the evidence. The Defence then elected to call evidence. The Defence case included the evidence of the Accused who chose to testify in his own Defence.

[5] In total, seventeen full or part-days were devoted to the conduct of the trial.

[6] The Court rendered its verdict on January 8, 2021 nearly 14 months after the trial first began in November of 2019.

[7] In rendering its decision the Accused was found "Not Guilty" on Count 4; Count 1 was stayed; and, "Guilty" verdicts were entered on counts 2 and 3.

[8] The Court will now proceed to sentence the offender on these two counts.

Factual Background

[9] The evidence offered at trial was extensively reviewed in my decision.

[10] A more focused analysis of the evidence based on an assessment of the victim's credibility and reliability versus that of the Accused enabled me to make findings of fact that resulted in the verdicts reached.

[11] As pointed out by me in my decision, I followed the reasoning of Justice Jamie Campbell in *R. v. Twinley*, 2020 NSSC 266, where he cautioned that a trial involving sexual assault does not simply boil down to a contest of credibility between the complainant and an Accused.

[12] My assessment of the complainant's veracity took into consideration not only her testimony but also the testimony of all the other witnesses called during the course of the trial including that of the Accused.

[13] My analysis of the evidence and my findings of fact can be found at paras. [242] to [286] of my decision.

[14] Crown counsel has provided an accurate summary of the facts which are reproduced on pp. 2-4 of his sentencing brief filed on April 16, 2021. He further lays out additional facts arising from evidence I accepted at trial. I believe they accurately reflect what I believe the evidence established and what I found to be the facts of the case.

[15] At para. [286] of my decision I specifically found, as facts, the following:

1. The Accused, APL, first had sexual relations with the complainant when she was in Grade Six, and therefore only 12 years of age;

2. That the sexual contact APL had with the complainant continued on a regular and frequent basis from that time until it finally ended in late 2014 or early 2015, when M.H. was in the early stages of her pregnancy. In reaching this finding I accept M.H.'s evidence as to when she last had sexual relations with the Accused;

3. That the sexual contact that occurred involved sexual touching of M.H.'s body by APL, which included sexual intercourse;

4. That the sexual contact that occurred between September 1, 2006 and before July 6, 2010, was when the complainant was younger than 16 years of age and hence incapable of giving legal consent;

5. That while in a position of trust or authority towards the complainant between July 5, 2010, and July 6, 2012, the Accused continued to have sexual relations with the complainant;

6. That after July 6, 2012, I was not satisfied that the Crown had established beyond a reasonable doubt, that the complainant did not consent to the sexual activity that happened between the complainant and the Accused, and that will be reflected in the verdicts that I am about to render.

[16] In accepting, for the most part, the evidence of the victim I stated, at paras. [268] and [269], the following:

> [268] Defence counsel was thorough in pointing out the various inconsistencies in M.H.'s testimony at trial when compared to things she previously said in police statements or at the Preliminary Inquiry. Some of these inconsistencies were more significant than others but most related to peripheral things such as the sequence of events involving the removal of clothing or whether the cords M.H. said APL used when she was sexually assaulted for the first time bound her feet and hands or ankles and wrists. The fact that the witness was not always consistent in her recall of these events does not significantly detract from her overall truthfulness or the reliability of her testimony. Nor does the fact that she waffled on proceeding with the charges on several occasions.
>
> [269] I accept her explanation that she became scared and was concerned about the impact these charges could have on her and her family in general. It is not uncommon for victims of such crimes to back away, given the tremendous pressure they must be under and the potential devastation such allegations can have, not just on them as victims, but also on the person accused of the crime and the other members of the family, where as here, the allegation is made by one member of a family against another.

[17] Contrast this with my assessment of APL's credibility. His attempt to explain his reasons for engaging in the conversation with the victim – the one she covertly recorded on her cell phone – as an effort "to help smooth things over between her and her former friend" lacked credibility. [See para. [272] of my written decision.]

[18] I concluded, at para. [275], that what was captured in the recording was tantamount to an admission of guilt on his part. In response to something the victim said, he had the opportunity to deny her comment that sexual relations between the two of them first began when she was in Gr. VI. He failed to do so. She would have only been 12 years of age at the time.

[19] I made similar comments about APL's lack of credibility in how he attempted to deflect any responsibility for the sexually explicit photographs he encouraged the victim to take of herself and then transmit to him. At para. [278] of my decision I stated that I was "convinced that these photographs and accompanying texts, were sent by M.H. (the victim) at APL's request.

[20] I will reiterate what I said in my decision – "The fact that the witness (ie. the victim) was not always consistent in her recall of these events does not significantly detract from her overall truthfulness or the reliability of her testimony." [Para. [268] of my written decision].

[21] The truthfulness and reliability of her testimony when juxtaposed with his lack of credibility persuaded me that he was guilty of sexual interference and sexual exploitation of his step-daughter beginning when she was just 12 years of age. And to make things even that much more despicable and disgusting was the fact that she was further compromised by a genetic disorder that caused her both intellectual and physical challenges. And, he was totally aware of it. Yet, he took full advantage of the situation to satisfy his own perverse sexual needs. For that he will be held accountable.

[22] I will now focus my attention on the *Criminal Code* provisions relating to sentencing. Under the heading:

> **Purpose and Principles of Sentencing**
>
> The *Criminal Code* has a number of provisions that deal with the purpose and principles of sentencing. They are found in sections 718 and 718.3 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 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.

[23] Section 718.01 provides:

> 718.01 – Objectives – offences against children – 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.

[24] Section 718.04 similarly requires the Court to focus on denunciation and deterrence for an offence that involves the abuse of a person who is vulnerable because of personal circumstances. As previously stated the victim in this case was not only a child when the abuse first began she was also particularly vulnerable because of her genetic disorder.

[25] Other relevant provisions of the *Criminal Code* include Section 718.1 which states, as a fundamental principle, that:

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

[26] And, finally, Section 718.2 lists some other sentencing principles. Those that relate to the matter now before me include the following:

> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
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> (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.
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances including their health and financial situation
>
> …
>
> shall be deemed to be aggravating circumstances.

[27] I will have more to say about this particular provision later in my decision.

[28] Returning now to Section 718.2 of the *Code*, sub-paragraphs (b), (c) and (d) have relevance to the matter now before me:

> …
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances:
>
> (c) where consecutive sentences are imposed the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> …

[29] Section 718.3 deals with punishment generally and need not be recited here in detail other than to say that the Court has considered the general intent of this particular section in reaching its decision today.

[30] The objectives and principles of sentencing are captured in this quote from the Supreme Court of Canada in the case of *R. v. M. (L)*, [2008] 2 SCR 163, as follows:

> [17] Far from being an exact science or an inflexible predetermined procedure, sentencing is primarily a matter for the trial judge's competence and expertise. The trial judge enjoys considerable discretion because of the individualized nature of the process (s. 718.1 *Cr. C.; R. v. Johnson*, [2003] 2 S.C.R. 357, 2003 SCC 46, at para. 22: *R. v. Proulx*, [2000] 1 S.C.R. 61, 2000 SCC 5, at para. 82). To arrive at an appropriate sentence in light of the complexity of the factors related to the nature of the offence and the personal characteristics of the offender, the judge must weigh the normative principles set out by Parliament in the *Criminal Code*:
>
> > - the objectives of denunciation, deterrence, separation of offenders from society, rehabilitation of offenders, and acknowledgment of and reparations for the harm they have done (s.718 *Cr. C.*) (see Appendix);
> >
> > - the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (s. 718.1 *Cr. C.*); and
> >
> > - the principles that a sentence should be increased or reduced to account for aggravating or mitigating circumstances, that a sentence should be similar to other sentences imposed in similar circumstances, that the least restrictive sanctions should be identified and that available sanctions other than imprisonment should be considered (s. 718.2 *Cr. C.*).

[31] I believe this very succinctly captures the essence of what sentencing is all about. There is no "one size, fits all" kind of approach. The Court must not only consider the nature of the offence and the degree of responsibility of the offender, it must also apply the provisions of the *Criminal Code* that deal with the purpose and principles of sentencing. They provide a framework for the Court to consider in arriving at a fit and just determination that is appropriate in the circumstances.

[32] Both Crown and Defence counsel referred to the Supreme Court of Canada decision of *R. v. Friesen*, 2020 SCC 9 ("*Friesen*") which, at para. 5, signalled an increase in sentences for sexual offences against children. In a case from this Court, Justice Jamie S. Campbell, in *R. v. McNutt*, 2020 NSSC 219, commented quite

extensively on the message being sent by the Supreme Court of Canada in *Friesen.* At paras. 79 to 83, Justice Campbell stated:

> [79] In R. v. Friesen 2020 SCC 9, the Supreme Court of Canada set out the law on sentencing for sexual offences against children. The Manitoba Court of Appeal described it as having "pressed the reset button". R. v. KNDW, 2020 MBCA 52. The strong message explicitly sent by the court was that sexual offences against children are violent crimes. They exploit the vulnerability of children and cause profound harm to them, their families and their communities. "Sentences for these crimes must increase." Friesen, at para. 5.
>
> [80] In the judgement the court addresses the past judicial treatment of these offences and takes an approach that clearly and directly focuses on the wrongfulness of the actions and the harmfulness of sexually abusing children. The "new direction" set by the court was to give better effect to Parliament's repeated message that sentences pertaining to sexual violence must increase.
>
> [81] The court noted that the degree of responsibility of the offender is especially heightened and highly blameworthy where an offender recognizes children's vulnerability and intentionally exploits it to achieve their selfish desires. Parliament's decision to prioritize denunciation and deterrence for offences involving children was said by the court to confirm the need for courts to impose more severe sanctions. "Dated precedents" should be treated cautiously.
>
> [82] The court did not set ranges but sent the message that mid-single digit penitentiary terms for sexual offences against children are normal and that upper single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare of exceptional circumstances.
>
> [83] The court set out 6 factors to be considered, among others. The likelihood to re-offend is a factor that here is in Mr. McNutt's favour. The abuse of a position of trust is a factor. The duration and frequency of abuse is a factor. Courts should not "discount a sentence simply because numerous incidents of sexual violence are covered by a single charge instead of multiple charges." Paras. 131-133. The age of victim is a factor. The degree of physical interference is a factor. The court noted that it is wrong to downgrade the wrongfulness of sexual assault where it does not include penetration or oral sex. The Supreme Court encourages courts to avoid using the terms "caressing" or "fondling". When an underaged victim is abused it is wrong for a court to consider their participation or de facto consent. They cannot give consent in any way.

[33] I totally agree with Justice Campbell's take on *Friesen*. My only regret is that I do not have the same ability to capture the essence of the Supreme Court of Canada's message quite so succinctly as he did.

[34] In their sentencing briefs both Crown and Defence counsel provided numerous examples of previously decided cases – some that pre-date and others that post-date *Friesen*. I want to thank both Crown and Defence counsel for their efforts and hard work in providing these case references to me.

Crown's Position on Sentence

[35] Crown counsel – Mr. Taylor – in pointing out the mitigating and aggravating factors he identified as being germane to the case, asked for a sentence of seven years imprisonment.

[36] In doing so, he expressed the view that the usual range of sentencing given the nature of the offences and the circumstance surrounding their commission is between three (3) and nine (9) years.

[37] He felt that a 7-year sentence would meet the objectives of denunciation and deterrence required in cases involving the abuse of children. It would also take into consideration the harm caused to the victim as well as the high degree of moral culpability of the offender, APL.

Defence Position on Sentence:

[38] Defence counsel, in her brief, noted the length of time it took to get the case to trial after the charges were first laid in April, 2016.

[39] As previously stated in my decision, the trial did not get underway until November of 2019. Some of the delay was attributed to Defence but other delays occurred because of Covid-19 and other unanticipated matters that arose during the course of the trial as well as delays to allow the Court sufficient time to prepare its decision.

[40] Defence counsel points out that this was, to use her words, "an extraordinary amount of time" for her client to have these charges hanging over his head and to be subject to release conditions.

[41] Ms. Piché also directed the Court's attention to a number of previously decided cases that resulted in sentences considerably less than the seven (7) years recommended by the Crown.

[42] Taking all of this into consideration, Defence counsel submitted that a fit sentence of 3½ years is within the range and consistent with sentences imposed in similar circumstance in Nova Scotia in both pre and post *Friesen* decisions.

Pre-Sentence Report

[43] A pre-sentence report was provided to the Court. I offer my thanks to the Probation Officer – Ms. Eaglestone – for preparing it.

[44] While noting that, APL has had previous involvement with the criminal justice system for drug trafficking it generally portrays a rather positive picture of the offender.

[45] He enjoyed a relatively normal upbringing. He was raised by his biological mother and step-father. He currently resides with his step-father and assists him both financially and emotionally.

[46] APL reported that he was not abused while growing up.

[47] Several sources reported that APL has a close and caring relationship with his own biological children – of which there are three – all daughters.

[48] One of the sources for the Pre-Sentence Report – CJ – a step-daughter of APL – described him, quoting from the Pre-Sentence Report "as kind, a hard-worker, people pleaser, helpful, and family-oriented." She advised the probation officer assigned to prepare the report that every Sunday she hosts a family meal at her home for all of APL's children – one of whom would be her half-sister.

[49] The PSR further reveals that APL has attained a Gr. X education but would like to work towards a Gr. XII equivalency and then apply to Nova Scotia Community College for a trade of some kind.

[50] APL further reported that he enjoys good physical health and clears about $750.00 a week in construction as a General Labour Foreman. He also reported that he does not have issues with either alcohol or substance abuse nor does he have any anger issues. He stated that, in his free time, he enjoys spending time with his children.

[51] When asked to offer comment on the maters now before the Court, APL chose not to say anything without first discussing it with his counsel.

[52] When offered the opportunity to address the Court during the sentence hearing, he similarly declined. This is his right – it is not an aggravating circumstance for the Court to take into consideration.

Victim Impact Statements

[53] The Court also received a victim impact statement from both the victim and her mother. They, each, presented their statements orally when the initial sentence hearing was held on June 29, 2021.

[54] While victim impact statements better enable the Court to appreciate the seriousness of the crimes and the devasting impact it has on victims, they do not affect the ultimate outcome. The sentence to be imposed is not increased as a result.

[55] It does, however, give those who are directly affected by crimes of violence such as the ones now before this Court, the opportunity to express the pain and suffering they have been forced to endure and which will, likely, remain with them for the rest of their lives. I can only hope that it will help to begin the process of healing and it is primarily for that reason that victim impact statements are so important and valuable to the proper administration of justice.

[56] I admire and respect the courage shown by the victim and her mother in sharing their feelings and expressing the pain and anguish caused to them by APL.

[57] I hope it makes him think about what he has done to them and deters him from ever considering a repeat of such crimes when he gains his release from prison at some time down the road.

Mitigating and Aggravating Circumstances

[58] Previously, I pointed out the requirement to consider any mitigating and aggravating circumstances relating to the offence or the offender in determining the appropriate sentence.

[59] This requirement along with a non-exhaustive list of deemed aggravating circumstances are codified in Section 718.2 of the *Criminal Code*. I do not propose to repeat what I have already said.

[60] In terms of mitigating circumstance Defence counsel urged me to consider the length of time these charges have been before the Court. I agree – 5 years and approximately 3 months is a long time to have to live with the uncertainty of not knowing what the ultimate disposition will be. A lot of the delay, however, has to be attributed to the Defence. Very little was caused by the prosecution while some of it was because of Covid-19 concerns and some can be attributable to other institutional causes.

[61] Nonetheless, it is still a long time between the laying of charges and final sentencing.

[62] Furthermore, APL's criminal record pertains to drug trafficking – a totally unrelated type of criminal offence.

[63] And, somewhat ironically, the reports from persons closely associated with APL, are that he has a close relationship with his biological off-spring and does not, in their opinion, pose a threat to any of them.

[64] Unfortunately, he failed miserably in his role as a surrogate father to his step-daughter. He held a position of trust and authority over her. To her, he was the only real father she had ever known. He, himself, testified at trial to having assumed the role of father to her and her brother.

[65] He began sexually abusing his step-daughter when she was but 12 years of age. It did not begin as simple touching or fondling. He tied her hands and feet to a bed and proceeded to have sexual intercourse with her.

[66] The abuse continued until she was approximately 18 years old all the while suffering from a genetic disorder that impaired her intellectual and physical development.

[67] Over the course of that approximately six year timeframe, the number of occasions when APL sexually violated his vulnerable and trusting victim can only be imagined. No definitive number was provided – the evidence of the victim only establishes that is occurred frequently and on a regular basis. It was not just a few times – it happened on many occasions.

[68] In testimony provided by the victim – evidence I accept – the victim was told by her abuser that it was normal for a person in his position to have sexual relations with a young person in his charge. She was also provided with money for participating in some of their sexual encounters. On other occasions he threatened to withhold funds needed to purchase medication that had been prescribed to her to treat her medical condition.

[69] On other occasions she was threatened by him to have one of his biological daughters and one of her female friends bully her if she said anything about what was going on. The young victim testified to being afraid of these two slightly older individuals.

[70] I accepted the victim's evidence that she was told by her abuser that it would disrupt the family and force her to have to move away from the area where they lived if she should tell anyone about the abuse she was being subjected to.

[71] I also accepted the victim's testimony that she was told by her abuser that no one, not even her mother, would believe her if she said anything about what he was doing to her. Sadly, this is exactly what occurred when she first tried telling her mother about the abuse she had been subjected to. It must have been devastating for her not to have been believed. And, even more devastating, it only resulted in further abuse and suffering caused by her step-father's sexual depravity. It was not just a

physical assault but also an assault to her dignity and feelings of self-worth. In time, I hope she gets the emotional support she needs to recover from her ordeals.

[72] After taking into consideration all of these factors, instead of trying to capture the gravity of the situation in my own words, I will turn to the comments of former Associate Chief Judge of the Nova Scotia Provincial Court, the Honourable Judge Allan Tufts, in the case of *R. v. S.L.C.*, [2000] N.S.J. No. 126, where, at paras. 29 – 30, he said (and I should note that this quote was also included in the Crown brief on sentencing filed on April 16, 2021 at pp. 6 and 7):

> There are few crimes that have a greater devastating effect than sexual assault, particularly on young children. Because this assault was committed by a person in the position of trust makes the circumstances that much more aggravating. What other place should children feel safe than in their own beds in their own home? In some way it may be possible to protect children from other types of assaults by strangers or even guardians, but children are completely helpless against attacks by the very people whose duty it is to nurture them, love them, and protect them. The thought that our society's children can be victims in their own homes by their own parents is repulsive to our community's standards and values. The need for denunciation in this sentencing is great.
>
> Similarly, in order to properly deter this conduct adequately, punitive measures must be considered. This applies to general deterrence as well as specific deterrence. While the need for deterrence is perhaps self-evident in any criminal activity, it is particularly so when these types of crimes are committed against vulnerable victims under the care and control of the perpetrator. Furthermore, the inherent difficulty in the detection of these crimes and the successful prosecution of them, coupled with the serious harm caused to the victim, makes deterrence an important aspect of sentencing of offenders of these types of offences. I emphasize these objectives at this stage because unless there are meaningful restorative objectives and those meaningful restorative objectives can be achieved, the requirement to emphasize denunciation and deterrence may only be met by incarceration.

[73] Judge Tufts again, like Justice Campbell said it much more eloquently and succinctly than I ever could.

[74] I accept what Judge Tufts had to say and apply them to the matter before me.

[75] A lengthy period of incarceration is required to properly denounce the sexual abuse perpetuated on the young victim by her former step-father.

[76] His conduct over the years while sexually abusing his compromised step-daughter and the high degree of moral culpability that he exhibited also requires a message of deterrence – both specific and general.

[77] At this moment, APL, I am going to ask you to please stand while I pronounce sentence on you.

[78] APL – after having been previously found guilty of sexual interference (Count #2) of a person under the age of 16 years, contrary to Section 151 of the *Criminal Code*, the Court now sentences you to six (6) years incarceration.

[79] And for the offence of sexual interference of a young person who was in a relationship of dependency with you and which conduct was exploitative of her (Count #3), contrary to Section 153(1)(a) of the *Criminal Code*, the Court sentences you to six months incarceration which will be served concurrent with the sentence for Count #2.

[80] I also grant the four ancillary orders requested by the Crown:

(i) A DNA Order pursuant to Section 487.051(1) and (2) of the *Criminal Code;*

(ii) A SOIRA Order with a lifetime duration pursuant to Section 490.013(2)(c) or any of the subsections of section 490.013 from (2.1) to (5) of the *Criminal Code*;

(iii) A Firearms Prohibition Order for life pursuant to Section 109 of the *Criminal Code*;

(iv) A Prohibition Order lasting for 20 years pursuant to Section 161 of the *Criminal Code* that prohibits APL from:

> (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;
>
> (b) being within two kilometres of any dwelling-house where M.H. ordinarily resides;
>
> (c) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; or
>
> (d) using the Internet or other digital network as the source of sexual stimulation.

This prohibition order will commence on the day APL is released from prison.

[81] APL, I ask that you accompany the Sheriff's Deputy who are here to safely transport you to the institution where you are to begin serving your sentence.

[82] I remind you that they are there to provide for your safety and I ask that you co-operate with them.

[83] I hope, APL, you will be assessed and you will accept any recommendations that are made for treatment of any underlying conditions that might have had anything to do with the sexual abuse you have committed on your former step-daughter.

[84] I hope and pray that she will continue to find the courage to heal from the harm you have caused. It will be a long journey – perhaps a lifetime journey – but with the love and support of her family and friends I hope she makes it.

[85] Deputy Sheriffs, please escort APL downstairs to await the preparation of the necessary paperwork.

[86] Thank you Counsel. Thank you APL.

McDougall, J.